108-305

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 212.

JOHN H. STARIN, APPELLANT,

vs.

THE SCHOONER JESSE WILLIAMSON, JR., HER TACKLE, &c., WILLIAM H. SISE ET AL., CLAIMANTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED APRIL 21, 1880.

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1 To the honorable Samuel Blatchford, judge of the district court of the United States for the southern district of New York:

The libel and complaint of John H. Starin, owner of the barge James A. Burden, against the schooner Jesse Williamson, jr., her tackle, &c., and the freight of said schooner, now pending in a cause of collision, alleges as follows:

First. That this is an action for collision, and the said schooner is now within the jurisdiction of this honorable court, and the libellant is the owner of the barge James A. Burden.

Second. That on the evening of the second day of November, 1875, the said barge, in tow of the steamtug Blanch Paige, on a hawser about eighty fathoms long, was bound on a voyage from New Haven to New York, having on board a general cargo of valuable merchandise, which the libellant had received on board said barge as a common carrier. That after said tug had just passed around Throgg's Point in the East River, the said schooner was discovered by those in charge of the barge to the leeward of the steamboat, and showing only her red light. That the schooner was bound east. That at the time she was so seen the barge in tow of said tug was following after said tug almost in a straight line, but heading a little to the windward of her, the wind being from the
2 northwest or thereabouts. That said schooner passed said tug on the port hand of said tug at such a distance that she could easily have cleared the barge also, if a proper lookout had been kept so as to see the barge, or if proper care had been taken in reference to the navigation of the schooner; but that instead of so navigating as to clear the barge, she took or kept such a course that she came in collision with the said barge.

That as soon as the said schooner was seen by the master of said barge to be approaching the barge in such a way as to render a collision probable, the helm of the barge was put hard aport, and the schooner was loudly hailed to keep away from said barge, which it was even then possible for her to have done by porting her helm; but that without making any such change she kept on and ran into and afoul of the said barge, striking her on the port side aft, a little forward of the cabin, breaking in the cabin and tearing down the woodwork and bringing the same down on the stove, so that said barge immediately took fire and was burned to the water's edge, and she, with her cargo on board, sank, and will be almost a total loss.

Third. That the said collision happened at about eight o'clock in the evening, and the night was a bright night and vessels could be seen a long distance, and the wind was blowing fresh from the northwest, and said schooner was sailing at a rapid rate.

That at the time the said tug and barge had all the regulation lights properly set and burning brightly, and everything was done on the part of said barge to avoid said collision that could be done, and the same was caused by the negligence and carelessness of those in charge of said schooner in that, among other things, she had no lookout properly performing his duty; in that she did not continue her course to pass the said barge on the port hand, as there was ample room for her to do,
3 there being nothing whatever in the way, and did not take proper measures to avoid the barge by changing the course that she was on when she was hailed, and in otherwise improperly navigating.

Fourth. That by reason of said collision the libellant has suffered damages in the injury to said barge and cargo to upwards of twenty-seven thousand dollars.

Fifth. That all and singular the premises are true and within the jurisdiction of this honorable court.

Wherefore he prays that process in due form of law may issue against said schooner, her tackle, &c., and freight, and that all persons having any interest therein may be compelled to appear and answer the matter aforesaid, and that said schooner may be condemned to pay the libellant's claim with interest and costs.

JNO. H. STARIN.

Sworn to before me this 5th day of November, 1875.

EDWARD L. OWEN,
U. S. Commissioner for the Southern District of New York.

BENEDICT, TAFT & BENEDICT,
Proctors.

E. C. BENEDICT,
Advocate.

4 District court of the United States for the southern district of New York.

Filed the fifth day of November, 1875. *Stipulation for libellant's costs, entered into pursuant to the rules and regulations of this court.*

Whereas a libel was filed in this court on the fifth day of November, in the year of our Lord one thousand eight hundred and seventy-five, by John H. Starin against the schooner Jesse Williamson, her tackle, &c., and freight, for the reasons and causes in the said libel mentioned, and praying that said vessel and freight be condemned, &c., and the said libellant and James D. Spraker, surety, parties hereto, hereby consenting, and agreeing that in case of default or contumacy on the part of the libellant or his surety, execution may issue against their goods, chattels, and lands, for the sum of two hundred and fifty dollars:

Now therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is bound in the sum of two hundred and fifty dollars, conditioned that the libellant above named shall appear and answer to the cause, and to interrogatories, and shall pay all such costs as shall be awarded against him by this court, or in case of appeal by the appellate court.

JOHN H. STARIN.
JAMES D. SPRAKER.

Taken and acknowledged this 5th day of November, 1875, before me.

EDWARD L. OWEN,
U. S. Commissioner.

5 SOUTHERN DISTRICT OF NEW YORK, *ss:*

James D. Spraker, party to the above stipulation, being duly sworn, doth depose and say, that he resides in the city of New York, and that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

JAMES D. SPRAKER.

Sworn to this 5th day of November, 1875, before me.

EDWARD L. OWEN,
U. S. Commissioner.

Recorded fifth day of November, 1875. , clerk.

6 SOUTHERN DISTRICT OF NEW YORK, *ss:*

[L. S.] The President of the United States of America to the marshal of the southern district of New York, greeting:

Whereas a libel hath been filed in the district court of the United States for the southern district of New York, on the fifth day of November, in the year of our Lord one thousand eight hundred and seventy-five, by John H. Starin, against the schooner Jesse Williamson, jr., her tackle, etc. (collision, $27,000.00), for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said schooner or vessel, her tackle, &c., may be cited in general and special, to answer the premises, and all proceedings being had, that the said schooner or vessel, her tackle, etc., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant.

You are therefore hereby commanded to attach the said schooner or vessel, her tackle, &c., and to detain the same in your custody, until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the southern district of New York, on the 23d day of November, inst., at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and thereto interpose a claim for the same, and to make their
7, 8, 9 allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the honorable Samuel Blatchford, judge of the said court, at the city of New York, in the southern district of New York, this fifth day of November, in the year of our Lord one thousand eight hundred and seventy-five, and of our Independence the one hundredth.

GEORGE F. BETTS, *Clerk.*

BENEDICT, TAFT & BENEDICT,
Proctors for Libellant.

In obedience to the within monition, I attached the schooner Jesse Williamson, jr., her tackle, &c., therein described, on the fifth day of November.

OLIVER FISKE,
U. S. Marshal.

Dated November 23d, 1875.

10 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on the ninth day of November, in the year of our Lord one thousand eight hundred and seventy-five.

Present, the Honorable Samuel Blatchford, district judge.

THE SCHOONER JESSE WILLIAMSON, JR., HER tackle, &c., and freight,
ads.
JOHN H. STARIN.

And now, Richard H. Seaward, master of said schooner, intervening as agent of the owners thereof for the interest of Daniel Marcy, William H. Sise, and others, owners of said schooner Jesse Williamson, jr., her tackle, &c., in the said schooner, her tackle, &c., appears before the honorable court and makes claim to the said schooner, her tackle, freight, &c., as the same are attached by the marshal, under process of this court, at the instance of John H. Starin; and the said Richard H. Seaward avers that he was in possession of the said schooner at the time of the attachment thereof, and that the persons above named and others the true and bona fide owners of the said schooner, her tackle, &c., and that no other person is the owner thereof; wherefore, they pray to defend accordingly.

11

RICHARD H. SEAWARD, *Agent.*

SCUDDER & CARTER,
Proctors for Claimants.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Richard H. Seaward, being duly sworn, deposes and says that he resides at Kittery Point, Maine; that he is the master of the said schooner above named, and agent of owners; that the owners of said schooner reside in Portsmouth, N. H., and Kittery, Maine, and that this deponent is duly authorized to put in this claim in behalf of the owners of the said schooner, &c., and that the said claim is true of the knowledge of this deponent, except as to the matters therein stated on information and belief, and as to such matters he believes it to be true.

RICHARD H. SEAWARD.

Sworn to and subscribed this ninth day of November, A. D. 1875, before me.

EDWARD L. OWEN,
U. S. Commissioner.

12

U. S. district court, southern district of New York.

JOHN H. STARIN,
against
THE SCHOONER JESSE WILLIAMSON, JR., HER tackle, &c., and freight.

We hereby consent that David Carll, of City Island, Westchester County, N. Y., and Alexander Y. Newkirk, of Communipaw, N. J., be appointed appraisers herein to appraise the value of the above-named schooner, her tackle, apparel, &c., and pro rata freight, and that the clerk of this court give notice of the appointment of the said Carll and Newkirk, as such appraisers in the above entitled cause.

Dated New York, Nov. 9th, 1875.

BENEDICT, TAFT & BENEDICT,
Libellant's Proctors.
SCUDDER & CARTER,
Claimants' Proctors.

13 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on the eighth day of November, in the year of our Lord one thousand eight hundred and seventy-five.

Present, the honorable Samuel Blatchford, district judge.

JOHN H. STARIN
against
THE SCHOONER JESSE WILLIAMSON, JR., HER tackle, &c., and freight.

On reading and filing the annexed consent, and on motion of Scudder & Carter, proctors for claimants herein, it is ordered that David Carll, of City Island, Westchester Co., N. Y., and Alexander Y. Newkirk, of Communipaw, N. J., be, and they are hereby, appointed appraisers to appraise the value of the above-named schooner, her tackle, &c., and pro rata freight proceeded against herein.

And it is further ordered that the clerk of this court give notice of the appointment of said David Carll and Alexander Y. Newkirk as such app'aisers.

SAMUEL BLATCHFORD.

14 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on the sixteenth day of November, in the year of our Lord one thousand eight hundred and seventy-five.

Present, the honorable Samuel Blatchford, district judge.

JOHN H. STARIN
vs.
THE SCHOONER JESSE WILLIAMSON, JR., HER tackle, &c.

An order having been entered herein by consent on the ninth day of November, 1875, by which order David Carll and Alexander Y. Newkirk were appointed appraisers to appraise the value of the above-mentioned schooner, her tackle, &c., and her pro rata freight, and it appearing that said appraisers have failed to agree upon such value:

Now, on the annexed consent, and on motion of Scudder & Carter, proctors for claimants herein, it is ordered that Horatio S. Brown be, and he is hereby, appointed an additional appraiser herein, to appraise such value as aforesaid, and that the clerk of this court give notice of such appointment.

SAMUEL BLATCHFORD.

15 We hereby consent to the entry of the foregoing order; the appraisers, David Carll and Alexander Y. Newkirk, having failed to agree, the clerk of the court to appoint the appraiser.

BENEDICT, TAFT & BENEDICT,
Libellant's Proctors.

Dated New York, November 13, 1875.

In conformity with the consent herein I hereby appoint Horatio S. Brown, port warden, as appraiser in this action.

GEO. F. BETTS, *Clerk.*

16, 17, 18 U. S. district court, southern district of New York. In admiralty.

JOHN H. STARIN
vs.
THE SCHOONER JESSE WILLIAMSON, JR., HER tackle, &c., and pro rata freight.

The undersigned, having been duly appointed and sworn as appraisers to appraise the value of the schooner Jesse Williamson, jr., her tackle, &c., and pro rata freight, do report that *I* have examined and appraised the said schooner, her tackle, &c., and do find that said schooner, her tackle, &c., in her damaged condition, is worth the sum of twenty-one hundred dollars in United States currency, and no more.

Dated New York, Nov. 12th, 1875.

H. S. BROWN,
DAVID CARLL,
City Island, New York.

All which is respectfully submitted.

19 District court of the United States for the southern district of New York. In admiralty.

Stipulation for value entered into pursuant to the rules and practice of this court.—Filed the 24th day of November, 1875.

Whereas a libel was filed on the fifth day of November, in the year of our Lord one thousand eight hundred and seventy-five, by John H. Starin against the schooner Jesse Williamson, her tackle, &c., for the reasons and causes in the said libel mentioned; and whereas the said schooner, her tackle, &c., have been attached, and are in the custody of the marshal, under the process issued in pursuance of the prayer of said libel; and whereas the value of said schooner, her tackle, &c., has been fixed by appraisement at the sum of twenty-one hundred dollars ($2,100), as appears from said appraiser's report now on file in said court; and the parties hereto hereby consenting and agreeing that in case of default or contumacy on the part of the claimants or their sureties, execution for the above amount may issue against their goods, chattels, and lands:

Now, therefore, the condition of this stipulation is such, that if the stipulators undersigned shall, at any time, upon the interlocutory or final order or decree of the said district court, or of any appellate court to which the above-named suit may proceed, and upon notice of such order or decree to Scudder & Carter, esquires, proctors for the claimants of said schooner

20 Jessie Williamson, her tackle, &c., abide by and pay the money awarded by the final decree rendered by the court or the appellate

court, if any appeal intervene, then this stipulation to be void; otherwise to remain in full force and virtue.

W. H. SISE & CO.,
By R. H. SEAWARD,
H. W. LOUD,
EDWARD H. LOUD.

Taken and acknowledged this 23d day of November, 1875, before me.

EDWARD L. OWEN,
U. S. Commissioner for the southern district of New York.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Henry W. Loud and Edward H. Loud, parties to the above stipulation, being duly sworn, depose and say, and each for himself says, that he resides in the eastern district of New York, that he is worth the sum of forty-two hundred dollars, over and above all his just debts and liabilities.

H. W. LOUD,
EDWARD H. LOUD.

Sworn to this 23d day of November, 1875, before me.

EDWARD L. OWEN,
U. S. Commissioner for the southern district of New York.

Recorded this 24th day of November, 1875.

Approved on due notice to libellant's proctors, no objections being made.

November 24th, 1875.

GEORGE F. BETTS, *Clerk.*

21 District court of the United States for the southern district of New York.

Stipulation entered into pursuant to the rules and practice of this court.—Filed the 9th day of November, 1875.

Whereas a libel was filed in this court on the fifth day of November, in the year of our Lord one thousand eight hundred and seventy-five, by John H. Starin, against the schooner Jesse Williamson, jr., her tackle, &c., and freight, for the reasons and causes in the said libel mentioned, and praying that said vessel, &c., may be condemned and sold, &c., and the parties hereto hereby consenting, and that in case of default or contumacy on the part of the claimants or their sureties, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands: And whereas, also, a claim has been filed in said cause by Daniel Marcy, William H. Sise, and others, owners of said vessel, &c.:

Now, therefore it is hereby stipulated and agreed for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby bound in the sum of two hundred and fifty dollars, conditioned that the claimants above named shall pay all costs and expenses which shall be awarded against them by the final decree of this court, or upon appeal by the appellate court.

DANIEL MARCY,
WILLIAM H. SISE,
By RICHARD H. SEAWARD, *Agent.*
H. W. LOUD.

Taken and acknowledged this ninth day of November, 1875, before me.
EDWARD L. OWEN,
U. S. Commissioner.

22 SOUTHERN DISTRICT OF NEW YORK, ss:

Henry W. Loud, one of the parties to the above stipulation, being duly sworn, doth depose and say that he resides in Brooklyn, N. Y., at No. 132 State street, that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

H. W. LOUD.

Sworn to this ninth day of November, 1875, before me.
EDWARD L. OWEN,
U. S. Commissioner.

Recorded this ninth day of November, 1875. , clerk.

23 To the honorable Samuel Blatchford, judge of the district court of the United States for the southern district of New York.

The respondents, William H. Sise, Ichabod Goodwin, Daniel Marcy, George Annable, G. F. Melcher, C. A. Hazlett, John R. Holbrook, George T. Vaughan, Charles H. Chase, John W. Moses, William R. Preston, George W. Pendexter, William Downs and Son, A. A. Payne, B. F. Webster, Matthew B. Vennard, and Horace M. Seawards, claimants of the schooner Jesse Williamsen, jr., her tackle, apparel and furniture, for answer to the libel and complaint of John H. Starin against the said schooner, her tackle, etc., and freight, then pending, alleges as follows:

First. That these respondents admit the several matters alleged in the first article of said libel, except that the said libellant is the owner of the barge James A. Burden, of which they have no knowledge, and therefore leave the libellant to his proof thereof.

Second. That these respondents, upon information and belief, deny each and every allegation contained in the second article of said libel, except as the same is hereinafter specifically admitted.

Third. That these respondents, upon information and belief, deny each and every allegation contained in the third article of said libel, except as the same is hereinafter specifically admitted.

Fourth. That these respondents have no knowledge as to the extent of the damage suffered by said barge and cargo, but, upon information and belief, deny that it amounts to anything like the sum alleged in the fourth article of the said libel.

24 Fifth. These respondents, further answering the said libel, allege: That at about fifteen minutes after seven o'clock on the evening mentioned in said libel, their said schooner, while on a voyage from New York to Portsmouth, New Hampshire, and when in the East River, about two miles to the westward of Throgg's Neck, and sailing on an easterly course in about the middle of the channel, the wind blowing a full breeze from the north-northwest, and it being about the last of the flood, discovered the green light and white light of a vessel about one point over her port bow, and apparently distant about two and a half or three miles, which said lights approached said schooner and shortly changed, showing both green and red lights, and when still nearer to said schooner, closed

her green light and showed the red and white only. That at this time said vessel and your respondents' said schooner, which was under full main and foresail and jib, and moving at the rate of about six knots an hour, had approached so that the said red light bore over your respondents' schooner's port bow, and distant about half the distance between your respondents' schooner and the New York shore, and had gone so far by the course of your respondents' said schooner—which, at this time, was not far from abreast the Neck—as to be entirely out of her track. That within a short time afterwards the lookout on your respondents' schooner discovered a barge which proved to be in tow of said vessel (which was a tug), on a very long hawser (of about one hundred fathoms in length), which said barge was far to the southward of the course of said tug, and heading nearly across the channel into which position the wind and tide had carried her in consequence of the neglect and mismanagement of those in charge, and the length of the hawser by which she was towed, and the change of course of said tug in rounding Throgg's Neck.

25 That there were no lights visible on said barge and no lookout, and that immediately on discovering her your respondents' schooner was ported, whereby, the then inevitable collision was made more light; that said barge struck your respondents' schooner a glancing blow (the barge and schooner then heading in opposite directions), carrying away her bowsprit, jibboom, head, head-gear and bulwarks on her port bow, and otherwise greatly straining and damaging her.

Sixth. That before and at the time of said collision it was star-light, and the new moon was not quite down, but it was quite dark, and your respondents' schooner had all the regulation lights properly set and burning brightly, and a careful lookout properly stationed and attentive to his duties, and that said collision was caused solely by the carelessness and negligence and improper seamanship of those in charge of said tug (called the Blanche Paige, as your respondents have since learned) and barge, among other things, in towing said barge on a hawser of undue and unsafe length, and in not having any light on or lookout or proper person in charge of said barge.

Seventh. That these respondents admit the jurisdiction of this honorable court.

Wherefore they pray that this honorable court would be pleased to pronounce against the libel aforesaid, and otherwise right and justice to administer in the premises, and that they may be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

SCUDDER & CARTER,
Proctors for Respondents.

26 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Edward H. Loud, being duly sworn, says that he is the agent for the schooner Jesse Williamson, jr., and transacts business for her owners; that he has read the foregoing answer and knows the contents thereof; that the same is true to the best of his knowledge, information, and belief; that the owners are not, nor is either of them, or the masters thereof, within this district, nor within one hundred miles thereof, as deponent believes; that his information is derived from statements made to him by the master of said schooner.

EDWARD H. LOUD.

Sworn to before me this 18th day of December, 1875.

EDWARD L. OWEN,

U. S. Commissioner for the Southern District of New York.

27 U. S. district court.

JOHN H. STARIN
vs.
THE SCHOONER JESSE WILLIAMSON, JR.

WILLIAM H. SISE, &c.,
vs.
THE STEAMTUG BLANCHE PAIGE AND THE barge James A. Burden.

Testimony for libellant in first case and claimant in the second case.

MAY 3D, 1877.

GILBERT YOST sworn:

Live in Hoboken; age, 36; follow water; done so for last twelve or thirteen years, more or less; know barge James A. Burden; was master of her up to November 2, 1875, for two years prior, about; Mr. Starin owned her; she was running from New Haven to New York at time of this occurrence; regular trips; one to two trips a week; left New Haven this time between 10 a. m., in tow of the Blanche Paige; reached
28 Throgg's Point about 8 to 9 p. m.; as we came up to Throgg's Point I was at my wheel; had wheel-house; it was about two-thirds of way forward from after part of upper deck; deck hand, Benjamin Lamorre, was in wheel-house with me; wind, as we came up to Throgg's Neck, was a little ahead but nearly on our starboard bow; before we rounded the Point it was broadside; after we rounded the Point it was more ahead; we were being towed to a hawser about eighty fathoms long; had been towed always that way up and down the Sound; we always towed at about that distance from tug-boat; I had two lights set on my barge, hanging aft from flag-staff; one over the other; two to three feet apart; white lights; I could see them from my pilot-house by turning my head and looking sideways back through rear window; they were burning bright as we rounded the Point; they could be seen a long distance, two or three miles; round globe lanterns with wire guards; they were special lanterns we had for signal lights; glass six or eight inches in diameter; we used them for no other purpose, and always used these two for that purpose; deck hand put them up that night; they had been up three hours before collision; put up at sundown.

I saw the aft lights of the Blanche Paige; two white lights; one above the other, the same as mine; those lights were burning brightly.

As we came around Throgg's Point that night I saw the buoy at the Point; we passed with my barge within a few feet of it; I saw it plainly; I was in a straight line after the Blanche Paige; only my head may have headed to windward of the Blanche Paige, that is, to starboard or right hand of stern of Blanche Paige.

I saw light of schooner; I saw a red light; that is the only light I rec-

ollect; a strong light; first saw that just as I rounded the Point or just before; when I saw it it bore off to leeward of me on my port side, left-hand side; when I first saw her, I saw the light and the vessel
29 both; it was clear sort of night so you could see plainly all around; not much moon; not any, if I recollect; it was clear, pretty clear; when I saw the light, the schooner was off to port side of the Blanche Paige, ahead of her; I saw her before she got abreast of the Blache Paige; got straightened on my course after I turned around the Point; could not tell course I was heading on by my compass, then; I had no compass; I was in straight line with the Blanche Paige, headed, if anything, a little to windward of Blanche Paige.

The schooner came around and struck me eighteen to twenty feet forward from my stern, on port side; she came sort of crossways like; the schooner was coming in an opposite direction, but bearing on my port side; she was six hundred or seven hundred feet from me before I thought there was danger of a collision; as they kept nearing me I hallooed to them; I staid at wheel; when I first saw the bearing, I put wheel hard over to port; my wheel was a spoke to port at the time; I was running a little on a port wheel; when I put my wheel hard port, she was three or four times the length of this room away from me, as near as I could judge; before blow I let wheel go and put wheel over hard astarboard; this was just before collision took place, to throw my head, if I could, opposite way; that was after she had lapped on to me; the man who was in wheel-house with me went out of wheel-house about time I saw her, or after that; he hallooed to the schooner; ran along the deck aft as she approached and hallooed at her; I had hallooed before that; I thought schooner seemed to change and came more to us, like; she was off pretty well when I first saw her; after she struck me I heard a hallo and looked back and saw a light, and I ran aft just as my man was coming on upper deck; I ran down and got my wife and fetched her up on upper deck; put her in pilot house and ran down and found my boy; when I went aft
30 I found the vessel was on fire; I saw blow had broken down one side of cabin; staunchions carried away on port side by cabin; stuff piled up in cabin; stove was in cabin; my wife was near stove; joiner work rested against her; she was caught in it; the barge burned up and sunk with her cargo; I got off on the Blanche Paige from forward; saved only the clothes we had on; cargo was general merchandise—wagons and molasses, pianos; putting my wheel hard to port changed direction of my boat a little; shore was about straight with barge at collision, and just got clear of the buoy and straightened around at collision.

Barge was 120 or 130 feet long; no other vessels in the way in the river there.

From where I was to port side of channel was a mile and a half to the other shore; we were going about five miles an hour; schooner was going, I should think, ten, or eleven, or twelve miles an hour; when I hailed her first there was room enough for her to clear us by going under our stern.

Cross-examined:

The flag-staff was aft; ran from lower deck through upper deck; it was aft of the cabin; Ben had been with me two years and five months.

Had no side lights; no other lights on board; these lanterns were hung

probably twenty feet above upper deck; I did not see the man putting them up; Ben put them up.

Had whistle from tug an hour before to look to lamps; one of the lamps was very dim, and Ben was on his way to it, hold of halyards, when whistle blew; he had started before I heard whistle; both lights were on one halyard; had only that one signal from tug.

31 MAY 4TH, 1877.

Had supper by daylight that night; had been at wheel but a few minutes, five minutes, before lights were put up.

Don't remember whether Ben ate before he put his lights up or after; pilot-house was about sixteen or seventeen feet above water; schooner was six hundred or seven hundred feet off when I first her; I was four hundred feet from my tug; I saw red light on schooner; saw no other light on her at any time; schooner was about abreast of tug when I put my wheel hard aport; I put my wheel hard aport because tug was heading into land, and I wanted to follow her; I noticed the buoy plainly.

She struck me in the cabin; fire blazed up quick; stove in centre of forward cabin; side of cabin knocked in; anchored barge.

Redirect:

Light was down an hour before collision; after crash I heard a hallo, and looked back along deck; Ben had gone aft, and I was waiting for him to come back; then I saw a light and smoke, and then I ran aft and saw there was a fire in the cabin—rubbish afire in cabin; went part way down stairs and jumped into cabin; I saw rubbish afire; I jumped into place stove was in; there was a fire in the stove—coal fire; the stove seemed to be mashed down, tumbled down; rubbish and panel-work burning; the fire I saw burning was around the stove; I rescued my wife for fear she would be burned.

BENJAMIN MORISON sworn:

Age, 28; Italian; was on barge Burden at collision; put up lights that night; put them up before I got to Execution Light; know where that is; put them up when sun went down; don't know the time; two sin-
32 gle lights aft, on flagg-staff; took them down two hours after I got them up; one did not burn very good; fixed it; put them up again; put them up three-quarters of an hour or an hour before the vessel hit us; after that did not take them down again before the vessel hit us; was looking at them all the time to see how they were burning; they were burning very good from that time till vessel hit us; I saw two single lights on tug on top of mast; one over the other.

I was outside of pilot-house looking out when we came to Throgg's Point; rough night; wind blew; I could see a mile or a mile and a half; I saw buoy off the fort that night; went not very far from buoy.

The barge kept a little head, to wind of the tug; I saw one light of schooner; the red light; I first saw it four hundred or five hundred feet off; I saw schooner's light when we were just going past the buoy; captain said schooner was going to strike us; I ran back on deck and halloed; captain halloed too; struck a little aft of where I was standing; jib-boom of schooner went through cabin; the woman was fast, with child

in arms; I took child; I saw wood-work on top of stove, and stove down, and wood-work was burning; I tried to pull wood away; could not, fire came so quick; bulkhead, between cabin and freight place, was knocked down too.

Cross-examined:

Had supper before dark; fixed lamps that day before we left New Haven; when I fixed lamp it had crust on; put no more oil in; picked off top of wick and pulled it up a wee bit; used signal oil.

PAUL JESSUP sworn:

In employ of Mr. Starin; for about six and a half years; in charge of store-house in New York; keep rope, oil, tallow, &c., that is used
33 on the boats; whenever I get an order I cut off a rope of a certain length; buy hawsers by the coil; about one hundred and twenty fathoms in a coil; nobody else cuts off hawsers but me; I cut off from forty-five to seventy-five fathoms for the tugs; seventy-five fathoms is the largest I ever cut off; some of the boats get four hawsers a year, some three, and some one; I cut for six tugs; seventy-five fathoms is usual length; I cut for our boats that run on Sound; I cut the hawsers during 1875.

Cross-examined:

Vanderbilt, Titan, Blanche Paige, American Eagle, Delaware, and Charles F. Starin; each boat has one hawser of this length.

PHILIP H. KIP sworn:

Pilot of tow-boats; was pilot of Blanche Paige at this time; been tow-boating about eighteen years; been master about fifteen years; running on Sound for two years, more or less; towed barges between New York and New Haven for about a year and a half; left New Haven on this day at 10 a. m.; had about seventy fathoms of hawser at time of occurrence; usual length of hawser to tow single barge that way is all way from seventy fathoms to one hundred and twenty-five; wind northwest, blowing heavy; clear; moon just gone down at 7 o'clock 15 minutes; collision was 7.30; I was in pilot-house; Mr. Baker was with me.

I had five lights, red, green; two on flag-staff, and head-light forward; two bright lights aft, and one bright light forward; the two aft were hung about two feet apart, about four feet from top of flag-staff—the upper one was; they were white lights; common globe lamps; my lights were burning good, all of them.

I first saw light of schooner after we turned the Point and got
34 straightened on our course; I saw the buoy at Throgg's Point that night; I passed three or four feet from buoy; we had got up to the buoy when I first saw the schooner's light; I saw her red light; she was about a mile and a half from us when I first the light; it was on our port side; we were going five or six miles an hour; that was as much as we could do then; it was blowing heavy; that was all there was to check us; the barge was almost after us when she turned the buoy; she was heading about half a point on our starboard quarter, to windward of us; I saw the lights on the barge; two bright white lights; about an hour or three-quarters of an hour before one of the lights was a little dim, and

we blowed for them to take it down; they took it down and trimmed it, and put it back again, and hoisted both lights up; I noticed the lights about two or three minutes before the collision; the lights on the barge were burning then; I made a practice of looking astern when it was blowing heavy, to see how barge was coming after me; when I got to buoy I was heading southwest by south; after I got by the buoys I hauled up to west northwest; the wind was northwest.

The schooner came up by us and passed us about four hundred feet to leeward; she was heading about east when she passed us; after that I walked in pilot-house to starboard side; Baker had the wheel; I stood alongside of him, and all at once felt jar; I kept going two or three minutes; then engineer said barge was afire, and I stopped and went out of pilot-house and saw the fire; I went to the barge; she anchored; before she anchored she drifted to leeward; by the time I got the people off the barge was all afire; at time of blow I was about three hundred feet from New York side of channel; the buoy is out three hundred to three hundred and twenty-five feet; the schooner was coming between nine and ten miles; the channel was all clear to the leeward.

35 When the schooner passed me I though' she would clear everything; the way she went by us I calculated she would clear the barge without any change in her course.

Cross-examined:

I think she would have cleared the barge one hundred and fifty or two hundred feet; the stern of barge was off the buoy, I think, when the schooner passed me; about sixty-five fathoms between tug and barge.

When I was heading southwest by south the barge was heading southwest by south; the barge changed to west northwest with us; after I got by the buoy myself I began to haul up to west northwest.

WILLIAM F. BAKER sworn:

Piloting; pilot and master ten or twelve years; was pilot on Blanche Paige at collision; had been on her some three months; been on Sound about fifteen months; towing barges; the hawser this time was the usual length; had five lights on tug—green and red, head-light, and two stern-lights, one above the other; they were burning bright at time of collision; saw two lights on barge, one over the other, about two feet apart; they were good, bright lights—globe-lights; clear night, not dark; good for seeing; about an hour before I whistled to barge one of her lights was dim; blowing heavy; took them down and set them again in two minutes; from that time till collision they were in good order, burning good; we steered southwest by south from Stepping Stones to Throgg's Point, then we hauled around buoy and hauled up to west-northwest; it was blowing, and I hauled up one or one and a half points so as to make west by north course, owing to wind; I turned buoy ten feet off from it; I saw the buoy that night; first the schooner after I got straightened

36 on west northwest course; she was one and a half or two miles off then; I was going five or six miles; from time I first saw schooner till collision we ran probably one thousand feet, or something like that; saw her red light; it bore about a point on our port bow; it bore about west by north; saw no other light on schooner at any time; at that time barge was nearly in line with us, heading a little on our starboard quar-

ter, a little to windward; I noticed barge when schooner was abreast of us; barge was following us then, nearly in line with us; when schooner was abreast of us I judged she was five hundred or six hundred feet to leeward of us; I should judge she was heading nearly east by south or east one-half south when she passed us; I supposed she would clear the barge the same as she had cleared us—full as much. The first after that I heard an alarm of fire from chief engineer; we slowed and stopped immediately; I saw brisk fire; the barge must have drifted a little, the wind was blowing so heavy; we got to her as quick as possible—in ten or fifteen minutes.

After I saw the red light I did nothing with my wheel that I remember till the schooner passed us.

MAY 7th, 1877.

Cross-examined:

Pilot and master twelve years; going on Sound between here and Boston; been pilot on the Fall River boats; was pilot last fall on the Old Colony; began on the Blanche Paige September, 1875; was on her till this accident; was on different boats of Starin's; after this accident went on the Pioneer, a boat they chartered; was on the Pioneer three months; I was pilot of Blanche Page; left New Haven about 10 a. m., about two hours before high water; it was slack water at buoy at Throgg's Point; between Hart's Island and Throgg's Point it was seven o'clock;
37 that would bring us there about half past seven; I looked at my watch at Throgg's Point at twenty-two or twenty-three minutes past seven; moon set when we were right off the fort, I think.

I blew the whistles to the barge for her light; I was at wheel at that time; Captain Kip was in pilot-house at that time alongside of me.

I was at the wheel from after supper to collision; from before the lights were set; we took supper before dark; could see light that night two or three miles; vessel's light; I think I saw schooner's light one and a half or two miles off; after turning Throgg's Point the course to Ferry Point, about three miles, is west one-half north; after Ferry Point the course is west one-half south to Riker's Island; I think schooner was heading east by south to east southeast; her sheets were off—free; never steered a barge.

From Throgg's Point to Execution Rock is about seven miles; I paid no attention to schooner after she got on our port quarter; I did not think there had been a collision till we got to the barge; I stopped towing as soon as chief engineer said barge was afire.

CHARLES FOWLER sworn:

Seaman; for seventeen years; on all kinds of vessels; sailing-vessels and steamships; on sailing-vessels for twelve years steady; all over the world; on steam vessels for the last five years; on the Blanche Paige one and a half years; on the Sound and around New York Harbor; remember this night of burning of Burden; I was standing on forward deck when the tug came around Throgg's; had been there fifteen minutes; I was to put down on a book the time we reached Fort Schuyler; when the moon got down it got pretty dark; you could see lights quite a distance; three or four miles; wind about northwest to west-northwest; blowing

very fresh; a good ten-knot breeze; had five lights set on the
38 Blanche Paige; bright head-light, green and red side-lights, and two stern-lights aft on flag-staff, one over the other; they were burning bright as we came around Throgg's Point. Owen Burns, the other deck hand, put up the lights on the Blanche Paige; saw two lights on barge aft on flag-staff; I saw them before we came around Throgg's Neck, and when we were rounding the buoy I saw them again; they were burning bright then; I remember seeing the buoy that night; I should say the Blanche Paige passed twelve or fifteen feet from buoy; the barge was following us right around the buoy; I saw schooner's light; saw it when we rounded the buoy; saw her port-light; a red one; about a mile off from us when I first saw it; we were straightened on our course when I first saw it; I looked to see if barge was coming on behind us and saw she was all right, and then went to kitchen door for drink of water; it was before that that I had seen the schooner's light; I saw it after the Blanche Paige rounded the buoy. After I had got the drink of water the schooner was right abreast of us; four hundred to five hundred feet off, I should judge, from us; she seemed to me to be going about east or east one-half south; I could not tell how Blanche Paige was heading; I did not notice schooner after she went by me; I think we were by Bailey's dock when the schooner was going by us; I have seen schooners going through that part of the gate; been in there myself.

The engineer first attracted my attention to the fire; got to barge in five or six minutes; went in boat; I felt a jerk and went aft to look at our hawser and then saw the barge's two lights.

GILBERT YOST recalled:

I saw one of the lights on my flagstaff after fire; and after I was on the tug it was lit; did not see but one; the halyards were loose and flying.

JAMES N. VAN WIE sworn:

Engineer; for seven or eight years; was on Blanche Paige at this
39 time; had been an engineer on her one and a half months; in charge of engine at time; had been for about two hours; as we rounded Throgg's engine was running full speed; had about forty-five pounds of steam on; allowed fifty; noticed buoy as we passed that night; we passed twenty-five to fifty feet from it; I was looking at barge every few minutes; saw nothing particular on her till I saw fire on her; did not notice lights on her; the barge's bow was a very little on tug's starboard quarter; running very nearly in line with tug; I saw schooner after she had hit the barge; did not see her before; it was right after; as barge hit schooner it surged on engine and I looked out and saw schooner heading direct across barge's stern; saw the fire three or four minutes after that; then I hallooed that barge was on fire.

The following evidence was then introduced on the part of the schooner:

Depositions of Richard H. Seaward, Charles C. Sawyer, and John W. Lewis, taken this 11th day of November, 1875.

RICHARD H. SEAWARD, being duly sworn and examined by Mr.

BLACK, proctor for the claimants in first entitled suit, and for libellants in second, testified:

I reside at Kittery Point, Maine; I am thirty-five years of age; I am a mariner; have followed the sea twenty-four years; I am master of the schooner Jesse Williamson, jr. The last voyage was from Port Johnston, New Jersey, to Portsmouth, New Hampshire, with a cargo of 266 tons of coal; we sailed on November 2d from Port Johnston about 2 p. m.; we passed through Hell Gate against the tide just at dark, and when within about two miles of Throgg's Neckit was in the neighborhood of 7 p. m. The wind was about north or north-northwest; I couldn't say how tide was; I supposed it was still against us; we had
40 mainsail, foresail, and jib on, and were about midway of channel and could see the dark land on each side. The weather was clear, but dark; it was star-light and the moon was nearly down; it was a new moon; all hands were on deck except the cook; the crew consisted of myself, mate, three men, and cook.

The mate's name is Charles Sawyer; the cook's, John W. Lewis; and Thomas B. Frisbee, Warren Blake, and William Saunders, were the seamen. The mate and Warren Blake and Saunders were forward on lookout, Frisbee was at the wheel, I was aft by the wheel. We were heading east by south.

The mate reported to me that he saw a green light on the port-bow way ahead, and in a few minutes he reported it was a steamer showing a white light, bow-light, and green and red lights, coming nearly for us, and then he reported to me that she had hid her green light and showed only her red light and white light. Then I called him aft and went forward, way forward, myself; then the steamer had passed up and was on our weather-beam. I saw rise up before us a barge or canal boat with no lights upon her. I sang out "hard aport" and "hard up."

Previous to seeing the barge, I sent the two men who were with me aft, to get ready to haul aft the main sheet; before they got aft I saw the barge and gave the orders I spoke of; I think it was a minute and a half or two minutes after I saw the barge before we struck her.

The barge was heading nearly across the river, and was to the south of the center of the channel She was a hundred fathoms or more astern of the tug, and far to the leeward of the direction of the tug, and heading across her course.

I think the channel is three-quarters of a mile wide there; this was about a quarter of a mile to the westward of Throgg's Neck.

41 We had red and green lights on our schooner, red in in the port-rigging and green in the starboard; they were burning brightly; I guess I had been on watch forward before I discovered the barge, and the barge was the first thing I saw; she was lying right in our track; from the way we came together I think she was going fast.

I saw my vessel swing off immediately after giving the orders, and struck the barge—going almost in opposite directions—a glancing blow. The jib-boom, bowsprit, headgear and head were broken, and bulwarks on port-bow of my vessel were stove in. The barge was a double-decked barge, all boarded up on side as far as I could see. I saw no one on barge and heard no one and had no hail. The vessels did not hang together; they

did not stop their way at all; after we struck the barge I saw a little light in the place where our bowsprit struck her; it appeared like a lamp burning in there; where our bowsprit went through the barges side, above the guard I saw this light; after we had passed clear of the barge I ordered wheel to starboard to keep her from jibing over and running ashore, and then went to work clearing the wreck forward so as to get to anchor; we got cleared and anchored about twenty minutes to eight, about a mile and a half from where we collided. We had a fresh breeze and we were going from five to six knots an hour.

The tug did not come near us; we saw her around the barge and then the tug went up to a wharf. We saw the barge burning, she burnt all night.

There were vessels in the vicinity; we anchored close alongside of one, the Hattie L. Curtiss, of Bangor, Captain Man. I went on board of her next morning; there was another at anchor off Whitestone, I think it is called, to the leeward of us; the Sarah P., of Calais, I think she was called; I won't be sure.

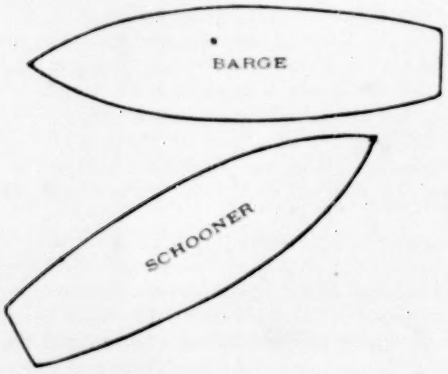
42 After anchoring we cleared our big anchor and set watch and turned in. Next day we went to City Island for repairs.

Cross-examined:

I had on board 266 tons of coal; I was carrying it on freight; the shippers were the Wilkesbarre Coal and Iron Co., I think; it was consigned to William H. Sise & Co., of Portsmouth, N. H.; the freight was $1.45 per ton.

Q. Please mark, with the aid of these models, how the vessels came together.

A. Witness places the models as follows:



Q. How do you think your schooner was heading at that time?

A. About southeast by south; I could not give it exactly, for I did not look at the compass.

Q. When you got forward, where was the steamer?

43 A. On my port bow; broad on my bow. I should think she was all of two hundred fathoms to windward of me; twelve hun-

dred feet; I don't think she could have been as far as that away from me, but six to eight hundred feet at any rate; she was a long ways off.

When we were passing each other, the steamer and schooner were six to eight hundred feet apart.

I did not order the men to go aft before I got forward; the mate come aft before I started to go forward; after I had been forward and looked around, I ordered the men to go aft; I did not look after the men as they went. When I found the vessels were coming together, I went aft to the main hatch, then I saw the two men; I had not seen them before that from the time I gave them the order to go aft.

Q. When you first saw the barge where was the steamer?

A. On my weather-beam; by aft the weather-beam; she had not got by us.

Q. Where was the barge at that time with reference to you?

A. I saw her right ahead.

Q. How far off?

A. I suppose four, five, or six hundred feet.

Q. Did you see any change in the course of the barge after that?

A. No, sir.

Q. Could you see the steamboat herself as she went by?

A. Yes; because I knew where to look for her.

Q. Enough to tell in what direction she was moving?

A. I could by the lights; in no other way.

Q. Could you tell whether her line of direction was parallel with yours?

A. I should think it was more to the northward than the opposite of ours was; heading across me on a diverging line; where we anchored was to the eastward of the collision.

44

I don't know whether anybody on any of the vessels I have named saw the collision; I have not seen the parties; the one I went aboard of was too far off for them to see the collision; my vessel is 103 feet on deck, over all; her tonnage is 156 tons and a trifle over; she is 24 years old.

I did not look at the compass to see how we were heading when I was aft; we had been running on that course that we were on about fifteen minutes before I went forward; I had been standing there all that time; I was going to haul aft the main sheet when I got far enough to go round Throgg's Neck.

Redirect:

The foresail of the schooner swung in as I stood on the main hatch; the mainsail becalmed it right dead before the wind.

By that swinging, and by the land, and by the direction of the wind, I judge the schooner was heading at the collision about southeast by south or thereabouts.

Q. In your judgment what was it that caused the barge to head across the channel in the way you have described?

A. Tide and wind, and improperly managed.

Q. What would be the effect on the barge of the tug making the turn at Throgg's Neck with a long hawser?

A. The effect would be that she would go to the southward of her course, with the wind to the northward.

Q. What would have been the effect with the tide in the contrary direction?

A. A vessel can't swing so far round against the tide as with it.

45 Q. What effect would a shorter hawser have had in keeping her following the tug?

A. One-half of the length of hawser would have made one-half the difference in her swinging.

Re-cross:

I don't know which way the tide was.

Q. If the barge ran off to the south of the tug she would head more to the south than the tug did, would she not?

A. Yes, sir; she would.

Q. What do you refer to by improper management?

A. I think if the barge had been properly attended to she would have been heading after the steamer that crossed us. I should think we struck the barge about ten or fifteen feet from her stern.

R. H. SEAWARD.

Sworn to before me this 11th day of November, 1875.

GEO. A. BLACK,
Notary Public, N. Y. Co.

THOMAS B. FRISBEE, being duly sworn, and examined by Mr. BLACK, proctor for the claimants in the first above *course*, and for libellants in the second above *course*, testifies as follows:

I live at Kittery, Maine; I am 43 years of age; I work part of time at sea, and part on land; I have followed the sea for thirty years; I was one of the crew of the Jesse Williamson, jr. I recollect the collision with a barge; it was in the evening about half-past seven, p. m.; somewhere off the fort; I haven't been here enough to remember the points of the land; the wind was about north-northwest; north-northwest to

46 northwest; I was at the wheel; I took it ten to fifteen minutes before seven; the captain was aft by the wheel; the mate was forward; forward of the windlass; all of the rest of the crew were on deck around the foremast; I couldn't tell where; the schooner had three sails on, foresail, mainsail, and jib; she was loaded; the stars were out some, but dimly; it was very dark; I had been steering east by south, and had been so for fifteen or twenty minutes; I heard no hails; I heard the captain and mate talking about a vessel—a steamer; I saw a steamer on our port bow; I saw the steamer but I had the wheel to attend to, and I did not pay any attention to the steamer; when I saw the steamer the captain had just gone forward; when the captain and mate were talking about the steamer, the captain was aft and the mate was forward; I didn't pay much attention to what they said; they were talking about lights.

Q. When the captain went forward, what did you see or hear after that?

A. I didn't see anything until he ordered me to hard up, then I saw a barge; she was a little on our port bow—ahead withal. I didn't see anything on her, excepting the barge itself. I didn't see any lights on her.

Q. Were there any lights on her?

A. I saw none.

The barge was close on to us when I saw her and got the order. I thought the barge lay near crossway of the channel; our schooner was about midway of the channel. I put the wheel hard up when I got the order. I had this order twice. They were not longer apart than a man could speak. The schooner paid off. I felt and saw the vessels come together.

Q. How was the barge heading—to which shore—when you struck her?

A. She was heading towards the fort, a little angling.

47 Our schooner was heading about east-southeast, I should think. I didn't look at the compass. I never heard a sound from the barge. I saw nobody on the barge. We struck the barge on the starboard quarter. I made a mistake; I meant to say port quarter, about ten or fifteen feet from the stern. The vessels did not hang together, but passed right along. I staid at the wheel until the anchor was ready. I saw the hole in the house of the barge. I could see nothing in the hole but a small light. I didn't exactly notice where the tug was when I saw the barge first. I didn't pay any attention to the tug. The tug was all clear of us. The mate came aft and the captain went forward, and after he went forward two men came aft; to aft of the after part of the house. The house is aft on the quarter. After we cleared the barge we cleared away the wreck, and got in a position to anchor as soon as we could. Three men before the mast and the captain, mate, and steward make the crew of the schooner.

The barge seemed to be moving after we passed the steamer. I couldn't see anything moving her. I supposed she must be in tow of the steamer or she wouldn't be there.

Cross-examined:

This voyage was the first time that I ever was through the East River. I know that the channel makes a turn at the fort. I suppose that the channel canted a little to the northward, so that after we passed the fort we would not have so free a wind as we had this side of it.

Q. And you were expecting, were you not, to round the fort as close as you could?

A. No, sir; I was expecting to steer the course that was given me.

48 Q. Did you expect that that course would not fetch you round the point at the fort as close as you could go?

A. I did not know.

Q. Were you expecting that your vessel could go around the point closer than she was going?

A. I don't know how close a vessel could go to the point; I was supposed to steer as I was told; I went to the wheel about ten or fifteen minutes before seven; she was this side of the fort then, but I cannot recollect the name of the place; I don't know how far this side of the fort she was; I could not see the fort when I took the wheel; I could see the light at the fort; I took the wheel from the captain; I think I was at the wheel twenty or twenty-five minutes before the collision, as near as I could judge; when I took the wheel the captain told me how to steer; at the time I took the wheel the light on the fort bore about ahead; the captain, when I took the wheel, told me to keep her east; when he went forward he told me to keep

her east by south; that was after the mate came aft; at that time the light on the fort was a little on our port bow.

Q. You say, when you took the wheel, the light bore about ahead; when did it change to come on your port bow?

A. It was not but a few minutes, after I took the wheel, before we altered the lights.

Q. Did you alter the lights by changing your wheel?

A. Yes, sir.

Q. Did you change the wheel without orders?

A. No.

Q. Who ordered the change which brought the light of the fort on your port bow?

A. The captain.

Q. When he went forward?

A. When he went forward, or just before he went forward.

49 Q. Was that the order to keep her east by south that you have spoken of?

A. Yes, sir.

Q. And, until you got that order, the light on the fort bore ahead, did it?

A. Of course, as we ran towards it, we brought the light open; we opened it.

Question repeated.

A. Not exactly ahead.

Q. How then?

A. A little on our port bow after it opened. I saw nothing, either of the tug or the barge until I got the order to hard up. The sails were not so as to interfere with my seeing ahead; I could see on the weather-bow but could not see on the lee-bow. When I got the order to hard up, I saw the bow of the barge; I did not see the steamer then; I saw a steamer when she passed; I can't tell where that was; I did not pay any particular attention to the steamer at all; I could not tell how far off from us she passed, because I did not take any notice; I saw lights on the steamer but I did not pay any attention to them; I was attending to my wheel. I could see the darkness of the land on either shore. When I saw the barge, I could see that it was some kind of a craft without sails. When I saw her I supposed she was close on to us; I mean by that fifty feet or a hundred feet off; I have been attached to the schooner about three weeks; she is a decent sailer; she will work decently well; we had the three lower sails on, no reefs in them; I suppose we were going six knots; probably when I saw the barge I could have seen the fort, if I had looked at it, but I had as much as I could do with my wheel without looking after anything else; I did not see the fort; did not look at it; I did not, when I saw the barge, take any notice of the light at the fort.

50 Q. Then when you said the barge was heading towards the fort, you do not mean that you saw that she was heading towards it, but that that is your judgment?

A. That is my judgment.

The collision took place between a quarter past seven and half-past.

Q. Had the two men got aft when you got the order to hard up?

A. Yes, sir; they were standing by the corner of the house when I got it; about six or seven feet forward of me.

Redirect:

I knew where the fort was when I formed my judgment as to how the barge was heading; our schooner had lights, a red light and a green.

Recross:

The fort was to the northward and westward of the light.

THOMAS B. FRISBIE.

Sworn to before me this 13th day of November, 1875.

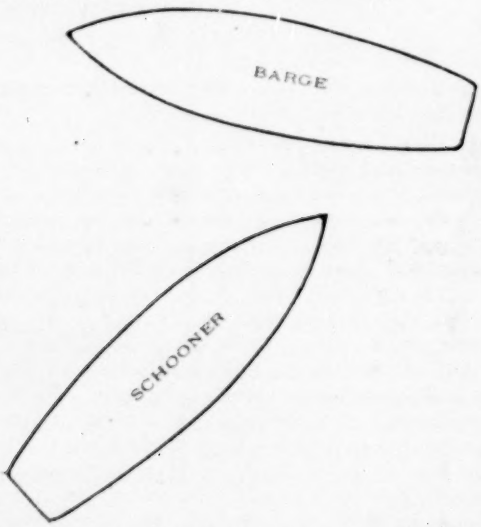
GEORGE A. BLACK,
Notary Public, New York County.

51 CHARLES C. SAWYER, being duly sworn and examined by the proctor for the claimant in first case, testified:

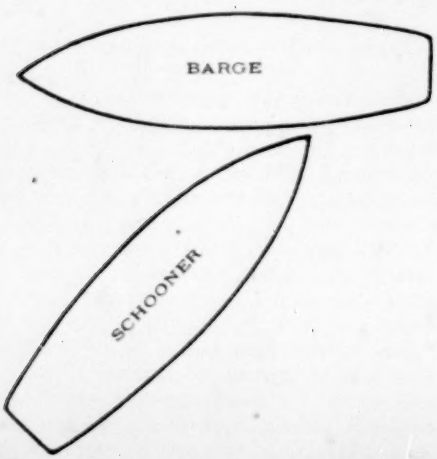
I live at Kittery Point, Maine; I am 20 years of age; I am a seaman; I have followed the sea nine years; I was on the schooner Jesse Williamson, jr., on the night of November 2d; I am mate; we sailed from Port Johnston about two p. m.; went through the East River and through Hell Gate about six p. m., against the tide; the schooner was loaded with coal, and was bound to Portsmouth, New Hampshire; a pilot took us through Hell Gate and left us at Riker's Island; after he left, the captain took the wheel for five minutes, and then Frisbie took it; I was forward on the lookout; I went forward after supper, about five o'clock, before we reached Hell Gate; I stayed forward till the captain called me aft, about seven p. m.; the collision was quarter past seven to half-past; I couldn't say the exact time; before coming aft I had reported that I saw a green light and then a white light on her port bow; then I reported that I saw a red light, and that she hid her green light, and the captain then called me aft and he went forward; this light appeared to be half to three-quarters of a mile off; we were just to the westward of Whitestone when I first saw the light, going five knots and one-half through the water; I don't know how the tide was then, but I should judge it was against us; hadn't turned.

William Saunders and Warren Blake were forward with me, on lookout with me; when I got aft the captain went forward. When I left to go aft the steamer's lights were a very little on our port bow; should think two hundred fathoms from us; after I got aft the first thing I heard or saw was, the captain sang out hard aport; hard up. I saw the man put his wheel hard up; when I came aft I left the two men forward; they were on the lookout; after the captain got forward he sent them
52 aft; I saw them come aft; they came aft before the captain gave the order to hard up; then I saw the barge after the captain sang out; I saw her about ahead; about a length and a half of the schooner off; I saw no lights on her, and I saw no one and heard no one on her; the barge was heading very nearly across the stream; it might have been a little westerly. The stream runs east by south and west by north, I should judge; our schooner was about midway of the channel, and we were heading east by south; the wind was about north-northwest; a fresh breeze; we had mainsail, foresail, and jib on. When the wheel was put hard up and she struck the barge, she headed southeast by south, and the barge was heading about northwest; I saw the tug was aft the weather

beam of our schooner when we struck the barge; the blow was a kind of siding blow—a glancing one; we struck her about twelve feet from her stern with our jib-boom, and carried away all our head gear and on port bow, broke our bib-boom off, carried away our martingale jumpers, three jib-boom guys, bowsprit, shrouds, both of them, two bob-stays, bowsprits, and her head off to the cut-water, and stove our port bow, and sprung our port cat-head part way off; foretop-mast, back-stays, outer jib-stay, and flying-jib-stay were parted; when I first saw the barge when the captain sung out hard up, they were heading in this way:



53 When they came together they were heading this way:



I supposed the barge was going from three to four knots; the tow-boat

was pulling her; I didn't see the line; I supposed she must have a tow-boat; she had no sail; she was moving; the vessels did not stop together at all; after we were clear we set about getting the anchor clear as soon as possible to prevent us going ashore, and anchored about a mile from where the accident happened; the tug did not come near us at all; I saw her round the barge when the barge was burning; a tug, I suppose it was her.

Before the captain sang out hard up our course was east by south; when I first saw the lights the tug was just hauling around the point of the fort; there is a light there. I could see the darkness of the land on either side of us; I judge, at the time of the collision, we were a quarter of a mile to the westward of the fort.

Cross-examined:

I have been aboard the schooner since the 11th of last March;
54 when we went through Hell Gate we had the tide against us; the tide changed about half-past six that night, as the pilot told us; the collision was from a quarter past seven to half-past seven, that is from three-quarters of an hour to an hour after the time when the pilot told us the tide changed; the pilot left us at Riker's Island about a quarter or twenty-five minutes past six; about half or three-quarters of an hour after that the captain called me aft; I should suppose it was about ten minutes past seven when the captain called me aft; I was aft about eight or ten minutes before the collision; he called me aft as soon as I reported that the green light was hid; we were then heading for the Throgg's Neck, across the bay; there had been no land beyond change in the heading of the schooner before that, that I know of; I was not aft to look at the compass; a man has got to look at the compass to tell whether a vessel swings or not; I looked at the compass after I went aft. Before I went aft I saw the light on Throgg's Neck; I saw it from the time it hove in sight till I turned to go aft; it was on our port bow all the time, I should judge, a point and a half or two points; I did not see any change in the bearing of that light to my recollection.

When I turned to go aft the steamer was about on our port bow abeam of us, not exactly abeam of us, but ahead on the port bow. She had not got up abreast of our bow; she might have had to run fifty to seventy-five fathoms before she would get up right square abeam of us.

As the steamer passed us abeam, I should judge she was from four to five hundred feet off; I saw the darkness of the steamboat, and her lights; I should judge the steamboat was going in about an opposite direction from us, very nearly, a little northerly if anything. As soon as the captain sung out hard up, I looked forward and saw the barge; I
55 looked at the compass and saw we were heading east by south; that was before the captain called out hard up; I looked at the compass and saw she was heading east by south.

I looked forward when the captain called hard up, and then I looked at the binnacle and saw the compass, and the vessel was heading then east by south; then I looked at the barge again and I kept my eye on her till the vessels came together; I did not see any change in the course of the barge; when I first saw the barge I should judge she was about once the *the* length of the schooner and a half distant; the schooner is, I suppose, two hundred feet long.

Q. Is that the way you meant to represent the vessels in the first picture you made?

A. Yes.

When I first saw the barge I saw about half or two-thirds of the side of her with her house or some kind of a covered place. The rest of the barge was under our lee bow. I was standing then on the port quarter; I was about six feet from the man at the wheel. The two men were there also. They were standing by the corner of the house on the port side.

Redirect:

I have never measured the length of our schooner.

Q. When you say the barge appeared a length and a half of your schooner off you, how far in feet did you mean to put it?

A. 225 feet from the place where I stood, and about half a length ahead of the schooner. The pilot did not state where the tide changed at 6.30 p. m.

Recross:

The pilot said the tide would change at half past six. He did not say whether it was for us or anybody else. I did not understand it was for anybody else but us.

56 Redirect:

Q. What were the words the pilot used, if you can recollect?

A. He said the tide changed at half-past six. That was all I heard him say about the tide.

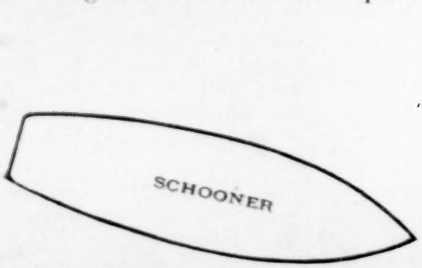
CHARLES C. SAWYER.

Sworn to before me this 13th day of November, 1875.

GEORGE A. BLACK,
Notary Public, New York County.

JOHN W. LEWIS, being duly sworn and examined by Mr. Black, testified:

I reside at Kittery Point, Maine; I am 27 years of age. I am a mariner. I was on the schooner Jesse Williamson, jr. I was below in the cabin when the captain sang out "hard up." I came on deck. I saw a barge close aboard of us. It wasn't but a minute or so before our jib-boom went into her. She was close aboard on the port bow. When I saw barge the vessels were in this position,



57 as nearly as I can judge. I saw no running lights on the barge; I saw no one aboard of her; I heard no hail from her. After we struck her I saw a light in her house through the hole in her side.

I did not see the tug-boat at all. When I first saw the barge she was close on to us; I couldn't tell whether she was moving or not. The vessels did not hold together at all. I staid on deck until after we had cleared the barge.

This was between 7 and 7.30 p. m. It was starlight, kind of dark, dim horizon. There was a new moon going down—over half, two-thirds down.

I did not look at our compass. Thomas Frisbie was at the wheel. I didn't notice what part of the channel we were in.

I am steward of the schooner. I attend to the lights. Our schooner had lights burning brightly.

Cross-examined:

We come up from our cabin by a companion-way. It comes up aft about three or four feet from the wheel. As soon as I struck the deck, I looked forward and saw the barge; I saw the whole length of her, except abouta third from aft—that was hidden by our jib. I staid right still where I was till the vessels came together. I was looking at her all the while. The man at the wheel was the only man of our crew that I saw on our deck before the collision. As I came out of the companion-way I could not help seeing him.

No one was below with me. I had been below about ten or fifteen minutes.

I mean by "running lights" the red and green lights.

58 Redirect:

I did not see any lights on the barge before the collision.

JOHN W. LEWIS.

Sworn to before me this 13th day of November, 1875.

GEO. A. BLACK,
Notary Public, N. Y. Co.

WILLIAM SAUNDERS, being duly sworn, and examined by Mr. Black, testified: I am 26 years old; I live in New York City; I am a seaman on the schooner Jesse Williamson, jr. I was on her at the time of the collision with the barge on November 2d; I was a seaman. At the time of the collision I was aft on the quarter deck; I had been forward on the lookout with the mate; I heard him report a green and bright light a little on our port bow. I saw those lights myself, and saw her change and show her red light, bright light, and green light. A few seconds after she hid her green light, and showed her red light, and bright light. All these changes were reported by the mate. She seemed to be about 1,200 feet from us; I saw nothing else following her. The captain called the mate aft after he reported these lights; I staid forward and the mate went aft. Warren Blake was forward with me. The captain came forward a few seconds after the mate went aft, and then he sent me and Warren Blake aft to stand by to haul aft the main sheet when he gave the order. I and Blake kept lookout till the captain came forward. I had seen nothing at all up to that time. When the captain sent us we went aft to the main sheet,

and after we were aft a few minutes I heard captain sing out to the man at the wheel to hard-a-port and hard-up. At that time I stepped
59 to windward to see what caused the order, and saw this barge make its appearance across our bow. I could see about two-thirds of her. I could see no lights aboard of her whatever. I heard no hails from her.

Q. How was she heading; in the same direction or across your track?

A. No, sir; in an opposite direction. I could see the darkness of the land on either side. We were in mid-channel as far as I could judge. It was a very dark night; stars were out, were not very bright. When I first saw barge she was from 50 to 100 feet off our bow; she appeared to be heading right across channel; I saw and felt the vessels come together. We struck her ten or fifteen feet from her stern, a pretty good blow; it must have been a pretty good one when it tore our bowsprit out. The vessels did not hang together; the blow was a slanting one, and our vessel slipped along her side.

The tug was right abeam, a little bit aft the beam at the time of the collision.

Cross-examined:

I don't know what the range lights of steamers are. I know that steamers carry a high light aft, and a low light forward, but I never heard them called the range lights.

I did not notice those lights on this steamer; I don't know whether she carried them or not; it is likely she did when she had a tow; all towboats are supposed to carry them.

Q. You did not look to see whether she carried them or not, did you?

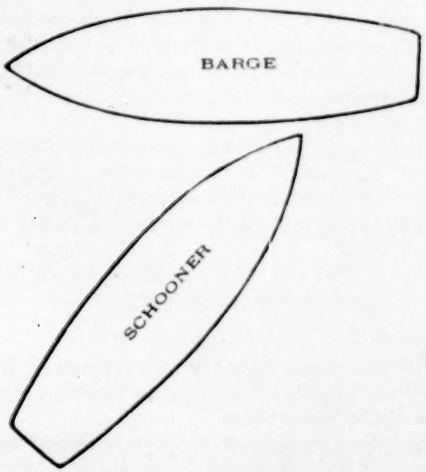
A. No, sir.

Q. Do you know whether the mate saw them?

A. I do not; I did not hear him say anything about them. I don't know whether Blake saw them; I did not ask him. The captain
60 was forward when he gave me the order to go aft, about twelve feet from me; he was twelve feet forward of me; I was just forward of the traveller, between the traveller and the windlass. The captain was twelve feet forward of that on the breast-hook. He did not give the order as soon as he got there. He went there and stood a few seconds, and then turned round and said "Boys go aft, and stand by to haul aft the main sheet."

When the captain came forward the tug was on our port bow; she had got down to us then—right down to us. When she passed us she was from four to five hundred feet off. I walked aft, I got to the corner of the house and was standing by the main sheet when the captain called out hard-a-port. Then as soon as he called I stepped up to windward about four steps, and then I looked forward and saw the barge, about two-thirds of her. The lee-bow and the head sails prevented me from seeing the rest of her. I could see so as to tell that she was a barge. I did not notice when I was forward how the light on Throgg's Neck bore—I noticed that light about fifteen minutes before the collision. We were heading for it then. I did not notice it after that. I saw no change in the direction of the barge after I saw her.

The following diagram shows about how the vessels came together;



61 We were going about six knots an hour.

W. SAUNDERS.

Sworn to before me this 13th day of November, 1875.

GEORGE A. BLACK,
Notary Public, New York County.

WARREN BLAKE, being duly sworn and examined by the proctor for the claimants in first above action, testified: I live at Kittery Point, Maine; I am 20 years old; I am a seaman, and followed the sea about three years; I have been a seaman on the Jesse Williamson, jr., for three weeks; I joined her in Kittery; I was on her on November 2d, at the time of the collision. That occurred at about a quarter-past seven in the evening, in the East River, about a quarter of a mile this side of Throgg's Neck. At the time of the collision I was aft; I had been forward; I was on the look-out with the mate and Saunders, and heard him report lights, a green light and a bright light, and then he reported a red light, green light, and bright light, and then the green light hidden, and then a bright light and red light. I saw these lights. These lights were all on our port bow. Apparently all on the same vessel, and were all the lights in sight in that quarter. After reporting these lights, a few minutes after, the mate went aft, and the captain came forward in a few seconds. I was on watch with Saunders while the mate went aft; I saw no more lights come into sight; I kept these lights in view all the time; they made no more changes; they seemed to be coming towards us on our port bow. When the captain came forward I should think the steamer was between 300 and 400 feet distant from us, off on our port bow. When the captain had been forward
62 a few minutes he ordered me and Saunders to go aft and stand by the main sheet. We did so, and had been aft a couple of seconds or so when we heard the captain say hard-a-port, hard-up. I stepped to

the windward and looked for her; I saw the barge on our port bow, about a third part of her near to us; she was heading across our bow, moving about northerly; I saw the vessels come together; I couldn't tell whether the course of our vessel changed; I wasn't at the wheel; the two vessels did not stand in the same position when they collided that they did when I first saw them; she seemed to have gone more slanting; more slanting towards our stern—that is, her head and our stern were closer together than when I first saw them.

The night was starlight, very dark. We could distinguish both shores by the darkness of the land. I should think we were midway in the channel. I don't know how the tide was running, nor how the wind was.

There were no lights visible on the barge. I heard no hail from her; I saw no lookout on her.

I did not notice where the tug was when the collision occurred, nor when I went aft; I paid no further attention to her after I came aft.

Cross-examined:

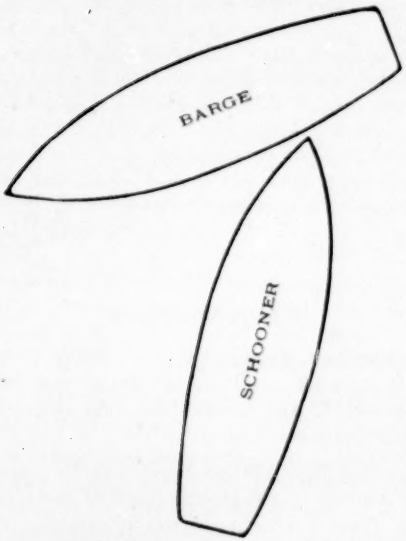
I did not notice the range lights on the steamer; I understand what you mean by the range lights; I won't undertake to say whether she had them or not; I did not look to see.

The steamer had not got quite down even with our stem when the captain came forward. I did not notice where she was when I started to go aft. I should judge the steamer and schooner passed between four and five hundred feet apart. The steamer's lights drew more and more on our port bow as she came down to us. When the steamer was abreast of us I saw the steamer herself; I could just discern something; I could not tell how her course seemed to be with reference to ours.

63 When she was abreast of us I saw the bright light and the red light; about the stern light I don't remember. I was standing at the corner of the house when the captain called hard-up. I stepped up to the windward just as soon as he called; stepped three or four steps. I looked forward at once and saw the barge—the forward part of her. The head sails hid the after part of her. I saw that it was a barge. I should think she was fifty feet or seventy-five feet ahead of the schooner.

I have seen darker nights than that. When the barge was burning I saw something going back and forward from her which I supposed was the tug. That was when we were at anchor; the barge was about a mile and a half from us. There was one vessel anchored to the northward of us about 100 feet or so; I saw no others.

This is about the way the vessels came together:



64 I calculate that the barge was heading about north.

Redirect:

I have seen brighter nights.

WARREN BLAKE.

Sworn to before me this 13th day of November, 1875.

GEORGE A. BLACK,
Notary Public, New York County.

At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Thursday, the nineteenth day of July, in the year of our Lord one thousand eight hundred and seventy-seven.

Present, honorable Samuel Blatchford, district judge.

JOHN H. STARIN
vs.
THE SCHOONER JESSE WILLIAMSON, JR., HER tackle, &c.

This case having been heard on the pleadings and proofs, and argued and submitted by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and
65 decreed by the court that the libel filed in this action be, and the same hereby is, dismissed with costs to be taxed against the libellant, and said costs having been taxed at the sum of one hundred and ninety and $\frac{57}{100}$ dollars, it is further ordered, adjudged, and decreed that

the claimants recover against the libellant herein the said sum of one hundred and ninety dollars and fifty-seven cents, the amount of their taxed costs as aforesaid.

And it is further ordered that unless an appeal be taken by libellant from this decree within ten days after service of a copy of the final decree (when entered) in the suit of William H. Sise and others vs. The Steamtug Blanche Paige and the Barge James A. Burden, their tackle, &c., the stipulators for libellant's costs forwith pay into court the amount of their stipulation, and that upon such payment thereof the clerk distribute the proceeds in satisfaction of the claimants' taxed costs in this suit.

[SEAL.] SAM'L BLATCHFORD.

A true copy.

GEO. F. BETTS, *Clerk.*

66 U. S. district court.

JOHN H. STARIN, LIBELLANT,
against
THE SCHOONER JESSE WILLIAMSON, JR., &C.

GENTLEMEN:

Please take notice that the libellant herein hereby appeals from the final decree entered in this cause to the circuit court of the United States for the southern district of New York, in the second circuit.

Dated March 14th, 1878.

Yours, &c.,

BENEDICT, TAFT & BENEDICT,
Libellant's Proctors.

To SCUDDER & CARTER, Esqs.,
Cl'm'ts' Proctors.

GEO. F. BETTS, Esq., *Clerk*, &c.

67 Circuit court of the United States for the southern district of New York, in the second circuit.

JOHN H. STARIN, LIBELLANT & APPELLANT,
against
THE SCHOONER JESSE WILLIAMSON, JR., HER tackle, &c., and freight, William H. Sies, Ichabod Goodwin, Daniel Marcy, George Annable, G. F. Melcher, C. A. Hazlitt, John R. Holbrook, George F. Vaughan, Charles H. Chase, John W. Moses, William R. Preston, George W. Pendexter, William Downs and Son, A. A. Payne, B. F. Webster, Matthew B. Vennard, and Horace M. Sewards, claimants and appellees.

To the honorable the circuit court of the United States for the southern district of New York, in the second circuit.

The appeal of the above-named libellant and appellant respectfully shows:

That on or about the fifth day of November, 1875, he exhibited his

libel in the district court of the United States for the southern district of New York, against the schooner Jesse Williamson, jr., and her freight, claiming over fifty dollars, praying, among other things, for the
68 reasons set forth in said libel, that said vessel and freight be condemned to pay the claim of the libellant with costs, as on reference to said libel will more fully appear.

That process issued out of said court and said schooner was duly seized, and the claimants appeared and gave bonds and said vessel was discharged from custody; and thereafter, and on or about the 22d day of December, 1875, they duly filed their answer to said libel, praying that the same might be dismissed with costs, as on reference thereto will appear.

That the said cause came on to be heard before the honorable Samuel Blatchford, judge of the said district court, on the 3d, 4th, 7th, and 8th days of May, 1877, upon the depositions and proofs taken in said cause and the testimony and proofs adduced by the respective parties; and the said judge having advised thereon, on the 19th day of July, 1877, made a final decree or sentence in said cause, whereby it was among other things ordered, adjudged, and decreed that the libel of the libellant herein be dismissed with costs, and that the said claimants recover of the libellant the sum of one hundred and ninety dollars and fifty-seven cents, their taxed costs. And this appellant is advised and insists that the said decree is erroneous, inasmuch as the libellant was entitled to recover the damages by him sustained by reason of the matters alleged in the libel.

And this appellant, for these and other reasons, appeals from the whole of said decree to the next circuit court to be held in said district, and on the said appeal he intends to have said course heard anew on the pleadings and proofs in the district court, and other proofs to be introduced in said circuit court. And he prays that the record and proceedings may be returned to the said circuit court, and that the said decree may be
69 reversed and a decree made that the said libellant recover his damages in the premises with costs, or such other decree made as to the said circuit court may seem just.

BENEDICT, TAFT & BENEDICT,
Lib'l't and App'l't's Proctors.

E. C. BENEDICT, *Advocate.*

70 Know all men by these presents that we, John H. Starin, as principal, and James D. Spraker, are held and firmly bound unto William H. Sise, Ichabod Goodwin, Daniel Marcy, George Annable, G. F. Melcher, C. A. Hazlitt, John R. Holbrook, George F. Vaughan, Charles H. Chase, John W. Moses, William R. Preston, George W. Pendexter, William Downs & Son, A. A. Payne, B. F. Webster, Matthew B. Vennard, and Horace M. Seawards, claimants of the schooner Jesse Williamson, jr., in the sum of six hundred and fifty dollars, to be paid to the said William H. Sise, Ichabod Goodwin, David Marcy, George Annable, G. F. Melcher, C. A. Hazlitt, John R. Holbrook, George F. Vaughan, Charles H. Chase, John W. Moses, William R. Preston, George W. Pendexter, William Downs & Son, A. A. Pagen, B. F. Webster, Matthew B. Vennard, and Horace M. Seawards, claimants of the schooner Jesse Williamson, jr., for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and admin-

istrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the twenty-first day of March, in the year of our Lord one thousand eight hundred and seventy-eight.

Whereas John H. Starin has presented an appeal to the circuit court of the United States for the southern district of New York, in the second circuit, to reverse the decree of the district court of the United States for the southern district of New York, bearing date the 19th day of July, 1877, in a suit in which said John H. Starin is libellant, against the schooner Jesse Williamson, jr., her tackle, &c.:

Now, therefore, the condition of this obligation is such that if the above-named John H. Starin shall prosecute said appeal with effect and pay all damages and costs which shall be awarded against him therein if he
71 shall fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

JNO. H. STARIN, [SEAL.]
By G. F. VAN VECHTEN,
Att'y in fact.
JAMES D. SPRAKER. [SEAL.]

Sealed and delivered, and taken and acknowledged this 21st day of March, A. D. 1878, before me.

[SEAL.] LOUIS C. LEWIS,
Notary Public, New York Co.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

James D. Spraker, being duly sworn, deposes and says that he resides in the southern district of New York; that he is worth the sum of thirteen hundred dollars over and above all his just debts and liabilities.

JAMES D. SPRAKER.

Sworn to this 21st day of March, A. D. 1878, before me.

[SEAL.] LOUIS C. LEWIS,
Notary Public, New York Co.

This bond approved as to form and amount and sufficiency of surety. Dated New York, March 21st, 1878.

SCUDDER & CARTER,
Proctors for Claimants.

72 U. S. district court.

JOHN H. STARIN
vs.
THE SCHOONER JESSE WILLIAMSON, JR.

WILLIAM H. SISE AND OTHERS
vs.
THE STEAM-TUG BLANCHE PAIGE AND THE Barge James A. Burden.

Opinion.

BLATCHFORD, J.

On the evening of the 2d of November, 1875, after dark, the schooner

Jesse Williamson, jr., collided with the barge James A. Burden, which was in tow on a hawser of the steam-tug Blanche Paige. The bowsprit of the schooner entered the port side of the cabin on the afterpart of the
73 deck of the barge, and upset a stove which had fire in it, and the barge took fire and burned up with her cargo. The schooner also was injured. John H. Starin, the owner of the barge and of the tug, sues the schooner for the loss of the barge and of her cargo, which the barge was carrying on freight. The owners of the schooner sue the tug and the barge to recover for the damage done to the schooner. The collision took place to the westward of Throgg's Point, the schooner being bound to the eastward and the tug and barge to the westward.

The libel in the suit against the schooner sets forth that the hawser by which the barge was towed was about eighty fathoms long; that after the tug had just passed around Throgg's Point the schooner was discovered by those in charge of the barge to the leeward of the tug, and showing only her red light; that at that time the barge was following after the tug almost in a straight line, but heading a little to the windward of her, the wind being from the northwest or thereabouts; that the schooner passed the tug, on the port hand of the tug at such a distance that she could easily have cleared the barge; also, if a proper lookout had been kept so as to see the barge, or if proper care had been taken in reference to the navigation of the schooner; that as soon as the schooner was seen by the master of the barge to be approaching the barge in such a way as to render a collision probable, the helm of the barge was put hard-a-port and the schooner was loudly hailed to keep away from the barge, which it was even then possible for her to do by porting her helm, but without making any such change she kept on and ran into the barge; that the tug and the barge had all the regulation lights properly set and burning brightly; and that the collision was caused by the negligence and carelessness of those in charge of the schooner, in that, among other things, she had no lookout properly performing his duty, and she did not continue her course to pass the barge on the port hand, as there was ample room for her to do,
74 there being nothing whatever in her way, and she did not take proper measures to avoid the barge by changing the course she was on when she was hailed.

The answer of the schooner alleges that when the schooner was about two miles to the westward of Throgg's Neck, and sailing on an easterly course, in about the middle of the channel she discovered the green light and the white light of a vessel about one point over her port bow, and apparently distant about two and one-half or three miles, which lights approached the schooner and shortly changed, showing both green and red lights; that when still nearer to the schooner said vessel closed her green light and showed the red and white only; that at that time said vessel and the schooner (which was moving at the rate of about six knots an hour) had approached so that said red light bore over the schooner's port bow, and distant about half the distance between the schooner and the New York shore, and had gone so far by the course of the schooner as to be entirely out of her track; that within a short time afterwards the lookout on the schooner discovered a barge which proved to be in tow of said vessel (which was a tug) on a very long hawser (of about 100 fathoms in length), which barge was far to the southward of the course of the tug

and heading nearly across the channel, into which position the wind and tide had carried her in consequence of the neglect and mismanagement of those in charge and the length of the hawser by which she was towed and the change of course of the tug in rounding Throgg's Point; that there were no lights visible on the barge and no lookout; that immediately on discovering her the schooner was ported; that the schooner had all the regulation lights properly set and burning brightly, and a careful lookout properly stationed and attentive to his duties; and that the collision was caused solely by the carelessness and negligence and improper seamanship of those in charge of the tug and barge in, among other things, towing the
75 barge on a hawser of undue and unsafe length, and, not having any light on or lookout or proper person in charge of the barge.

The libel of the owners of the schooner contains the same averments as their answer to the libel of the owner of the barge.

The answer of the owner of the tug and the barge, which was filed after the other three pleadings had been filed, avers that the tug and the barge had come around Throgg's Point on the starboard side of the channel and as near to the starboard edge of the channel as was prudent; that after the tug and the barge had just passed around Throgg's Point, the schooner was discovered by those in charge of the barge to the leeward of and ahead of the tug bound eastward and showing only her red light; that the barge in tow of the tug was following after the tug almost directly behind her, but heading a little to the starboard of her; that it was not possible for the tug and the barge to have passed on the other side of the schooner; that, at the time the tug had all the regulation lights properly set and burning brightly, and indicating that she had a vessel in tow, and the barge had the regulation light also properly set and burning brightly; and that there was negligence in the schooner, causing the collision, in that she did not take proper measures to avoid the barge by porting her wheel and changing the course she was on in time to avoid the barge, and in that, although she was approaching the tug and the barge, on their port hand, in such a way that the tug could not possibly draw the barge out of the way, and that the barge could do nothing to avoid her, except to port her wheel, which she did; the schooner kept on her course toward the barge until she struck. In other respects the answer of the owner of the tug and the barge contains the same averments that his libel does.

The libel of the owner of the barge in avering that the tug and the barge had all the regulation lights properly set and burning brightly, does not state what lights either vessel had. This averment is contained
76 in the third article of such libel. The answer to that libel denies all the allegations contained in such third article except as specifically admitted. There is no admission of the allegation as to the lights on the tug and the barge, except what is found in the statements in the answer above recited, respecting the green light, the red light, and the white light of the tug. The answer states that there were no lights visible on the barge, and while it alleges fault in the tug and the barge, in that the barge had no light, it does not allege as a fault in the tug, that the tug did not have all her proper lights, or did not have the proper lights to indicate that she had a vessel in tow. So, too, the libel of the owners of the schooner mentions the red, the green, and the white lights of the schooner, and avers

that there were no lights visible on the barge, and alleges that the collision was the fault of the tug and the barge, in that the barge had no light; but it does not allege any want of proper lights on the tug. The answer to such libel alleges that the tug had all the regulation lights properly set and burning brightly and indicating that she had a vessel in tow, and that the barge ha dthe regulation light (in the singular) also properly set and burning brightly, but it fails to state what lights the tug had or where they were placed, or what the lights were which indicated that she had a vessel in tow or where they were placed. The tug had two common globe lanterns with white lights, one above the other, about two feet apart, about four feet from the top of her flagstaff aft, and she had a white head-light, and green and red lights. Those flagstaff lights aft on the tug were not noticed by any one on the schooner. The barge had two globe lanterns with white lights similarly arranged on her flagstaff aft. They were not noticed by any one on the schooner. The pleadings on the part of the schooner are very unsatisfactory. If the schooner failed to see any towing lights on the tug and so failed because the tug did not have proper towing lights, and thus was brought suddenly, and without receiving proper warning into the presence
77 of the barge, and that was believed by the schooner to have been a cause contributing to the collision, it was to be expected that averments to that effect would be found in such pleadings. But there are none such averments. The failure to see the lights aft on the flagstaff of the tug, and the failure to aver in the pleadings that they were not seen because they were not proper towing lights, would show that there could be no issue regarded as raised as to whether such lights were proper towing lights, if only the averment had been made in the libel of the owner of the barge (which was the first pleading filed) that the tug had such lights as proper towing lights. But the averment of that libel is only that the tug had all the regulation lights, and that averment is denied by the answer of the schooner. On the whole I think the question must be examined as to whether the lights which the tug had as towing lights were the proper regulation towing lights.

Rule 4th of the "Rules for preventing collisions on the water," contained in section 4233 of the Revised Statutes, provides as follows: "Steam vessels, when towing other vessels, shall carry two bright, white mast-head lights vertically, in addition to their side-lights, so as to distinguish them from other steam vessels. Each of these mast-head lights shall be of the same character and construction as the mast-head lights prescribed by rule 3." Rule 3 shows that by a "mast-head light," as spoken of in Rules 3 and 4, is meant a light at the foremast-head, in a steam vessel which has a foremast; that each of the two towing lights in such a steam vessel is to be a bright, white light of such a character as to be visible on a dark night with a clear atmosphere at a distance of at least five miles, and so constructed as to show a uniform and unbroken light over an arc of the horizon of twenty points of the compass, and so fixed as to throw the light ten points on each side of the vessel, namely, from right ahead to two points abaft the beam on either side; and that the two lights are to be arranged vertically, and are to be in addition to the green and red side lights.

78 Rule 4 states the object of this arrangement of white lights to be to distinguish towing steam vessels from other steam vessels.

This tug did not carry sail and had no foremast. She was, however, such a steam vessel as is spoken of in rule 7, and was required to carry the red and green sidelights, and in addition thereto, a central range of two white lights, the after light being carried at an elevation of at least fifteen feet above the light at the head of the vessel, the head light being so constructed as to show a good light through twenty points of the compass, namely, from right ahead to two points abaft of the beam on either side of the vessel, and the after light so as to show all around the horizon. Such central range of two lights the tug was bound to carry as a steam vessel when not towing; and she was bound, when towing, to carry two lights at her head, arranged vertically. "The light at the head of the vessel," prescribed in rule 7, is the equivalent of the light "at the foremast head," prescribed in rule 3, and where a towing steam vessel of the class mentioned in rule 3 is required by rule 4 to carry two bright, white mast-head lights, arranged vertically, to distinguish her from other steam vessels of her class; a towing steam vessel of the class mentioned in rule 7, is required by rule 4 to carry two head-lights, arranged vertically, to distinguish her from other steam vessels of her class. I considered this question in the case of The U. S. Grant (7 Benedict, 195), very fully, and arrived at the conclusion that under provisions of law such as are now found in section 4233 of the Revised Statutes, a steam-tug, when not towing, is bound to carry a light at the head of the vessel and an after light in a central range, and is bound when towing to carry two lights at her head, and to carry them vertically; that is, one above the other, and to dispense with the after light, but still to carry the green and red lights.

The steam-tug in the present case did not have two head-lights arranged vertically. She had only one head-light. The idea of the statute
79 is, that one white head-light shall indicate a steam vessel not towing, and two white head-lights shall indicate a steam vessel towing, for it expressly forbids sail vessels whether under way or being towed from carrying any white head-light. As there is to be a white head-light in the front of the vessel, at her head, conspicuous, first to be seen, when she is not towing, so there are to be two of them arranged vertically, one above the other in the front of the vessel, at her head, conspicuous, first to be seen, when she is towing. The object is that a tow shall be indicated to other vessels by the lights on the tug at the earliest possible moment, so that they may give both tug and tow a sufficiently wide berth. For that purpose the towing lights are to be head-lights, and each is to be of the brilliancy and size and in the position of the usual head-light. In the present case the tug ought not to have had any light on her flagstaff aft. The two globe lanterns she had aft were not proper towing lights. They were not head-lights and were not calculated to attract attention, and it is not shown that they were of a brilliancy equal to that of the head-light. If the tug had had proper towing lights at her head, in the same position with the head-light which she did have, it is quite clear that they would have been seen by the schooner as soon as the head-light of the tug was seen. That was seen by the schooner a long distance off and so were the red and green lights of the tug. The fact that the two after lights on the tug were not seen from the schooner indicates that they must have been very feeble lights. The schooner had no proper notice that the tug had a vessel in tow and the failure to give such notice was a fault in the tug which contributed to the collision.

The barge and the tug as one vessel, and that a steam vessel, were bound as between either of themselves and the schooner, to keep out of the way of the schooner, if the schooner on the one hand, and the barge and the tug on the other, were proceeding in such direction as to involve risk of collision, although the barge was being towed astern of the tug;
80 and it was the duty of the schooner as well as her privilege to keep her course unless there were special circumstances rendering a departure from these requirements necessary, in order to avoid immediate danger.

The Cleadon, 14 Morris P. C. C., 92, 97.
The Warren, Law Rep., 3 Adm. & Eccl., 553.
The Civilta, 6 Benedict, 309, 319.
The U. S. Grant, 7 id., 195, 204, 205.

The evidence shows, I think, that the schooner did not change her course so as to embarrass the tug or the barge. She cleared the tug and had no reason to suppose the barge was being towed behind the tug. The lights which the barge had were as feeble to indicate her presence as were the after lights on the tug to indicate there was a tow. The fact that the schooner saw the head-light and side-lights of the tug and did not see the two lights aft on the barge, indicates that those lights were defective, as a warning to the schooner, either in position or size or brilliancy.

The obligation resting on the barge and the tug to keep out of the way of the schooner, imposes on them, as the schooner did not change her course to their embarrassment, the necessity of showing affirmatively that the schooner committed a fault in not changing her course, or that there were special circumstances which required her to do something which she did not do, or avoid doing something which she did. The libel of the barge sets forth as a fault in the schooner that she had no lookout properly performing his duty. The mate of the schooner, with two seamen, Blake and Saunders, were forward on the lookout when the lights of the tug were first seen from the schooner. The master was aft by the wheel, and a seaman, Frisbee, had the wheel. The schooner was heading east. The mate reported to the master a green light on the port bow "way ahead." In a few minutes he reported it was a steamer showing a white bow light, and green and red lights, coming nearly for the schooner, and then he reported that she had hidden her green light and showed only her red
81 light and her white light. The master then called the mate aft, and he came aft, and the master went forward himself, telling Frisbee to keep the schooner east by south, which was done. The master then sent aft the two men who were forward to get ready to haul aft the main sheet preparatory to turning Throgg's Point. They started aft, but before they got aft the master saw the barge rise up before him.

He ordered his wheel hard-a-port, and the order was obeyed, but the barge and the schooner collided. The schooner, from the time she sighted the tug, made no change towards the tug and the barge. She changed one point away from them, from east to east by south, and afterwards, by hard-a-porting, she changed more away from them. From these circumstance' and from the way in which the vessels struck each other, it is manifest that the barge was not moving either west or west by north, but was moving crosswise of those courses to the northward. I am not satisfied from the evidence that the master, or any one else on the schooner, ought

to or could have seen the barge any sooner than she was seen, or that there was any deficiency in the lookout on the schooner, which contributed to the collision. The libel of the barge also alleges fault in the schooner in that she did not continue her course to pass the barge on the port hand. If this means that after sighting the tug the schooner changed towards the tug and barge, the evidence shows the contrary. Such libel also alleges that the schooner took or kept such a course that she collided with the barge. The evidence shows that she changed her course away from the barge as soon as she sighted the barge, and that there was no fault in her in not seeing the barge sooner. The libel of the barge also alleges that the schooner was in fault because she did not change her course by porting when she was hailed from the barge. It appears that she heard no hail, and it does not appear that she ought to or could have heard any hail which the barge made, and it is shown that she did port as soon as she discovered the barge.

82, 83, 84 The answer of the tug and the barge contains no averments as to fault in the schooner which are not covered by the foregoing observations.

In the suit against the tug and the barge there must be a decree for the libellants against both vessels with costs, with a reference to ascertain the damages. In the suit against the schooner the libel is dismissed with costs.

G. A. Black, for the schooner.

R. D. Benedict, for the tug and the barge.

(Endorsed:) U. S. circuit court. Filed May 2, 1878. John I. Davenport, clerk.

85 U. S. circuit court.

JOHN H. STARIN
vs.
THE SCHOONER JESSE WILLIAMSON, JR., &C.

WILLIAM H. SISE ET AL.
vs.
THE STEAM-TUG BLANCHE PAIGE AND BARGE James A. Burden.

Additional testimony taken on appeal.

BENJAMIN SPRAGUE, being duly sworn as a witness for the appellants in each of above cases, says:

I live in Brooklyn; am a Hell Gate pilot, and have been about 12 years. Have been in the habit of piloting all kinds of vessels through the Gate during that time from a sloop to a steamship.

Q. Are you familiar with the lights carried at night by different vessels?

A. Yes, sir.

86 Q. Have you, while piloting sailing vessels at night, seen the lights that are carried by tugs when having vessels in tow?

(Objected to as not calling for the experience of the witness in all kinds of vessels, but limiting it to sailing vessels.)

A. Yes, sir.

Q. What lights are the lights used to distinguish a tug-boat having vessels in tow?

(Objected to on the ground that the law provides for that.)

A. Two aft lights, one above the other.

Q. Did you ever see a tug-boat having a vessel or vessels in tow which carried two vertical lights forward?

(Objected to as irrelevant and immaterial.)

A. No, sir.

Q. If you were navigating a sailing vessel and should meet at night in the Sound or in the East River a steamboat, where would you look in order to find out whether she had anything in tow or not?

(Objected to as incompetent and irrelevant.)

A. I should look for the lights on the after flag-staff.

Q. Is there any general understanding on this point among navigators in and about the waters about New York?

(Objected to as incompetent, irrelevant, and not specific in not stating from what locality the navigators hail whose understanding is asked for.)

A. Yes, sir.

87 Q. What is the general understanding?

(Objected to on the same grounds.)

A. If she was towing something astern we should know there was something if we saw the two lights on the flag-staff aft placed one above the other.

Cross-examined:

Q. Are you acquainted with the requirements of the Revised Statutes of the United States as to what lights should be carried on vessels?

(Objected to as immaterial.)

A. I am.

Q. What is the character of the bow light required to be carried?

(Objected to.)

A. If any, a white light.

Q. Visible how many points on each side?

(Objected to.)

A. It is supposed to be carried amidships.

Q. Question repeated. Do you understand the question?

(Objected to.)

A. If you carry a bow light, you carry it as near midship as you can get it.

Q. Do you understand the meaning of the word points?

A. Yes.

Q. What does it mean in that connection?

A. It means one point, two points, or three points on either side.

Q. What number of points on either bow should a bow light be visible under the law, as you understand it?

88 (Objected to as incompetent and immaterial.)

A. It should be visible only to be seen right ahead.

Q. Do you know what a mast-head light is, as required by law?

A. Yes, sir.

Q. Tell me what your notion of it is.

A. Witness asks on what kind of a vessel. Pilot boats carry a red light and other vessels carry a white light. The law requires a white light.

Q. What is your understanding of the character of lights to be carried at the mast-head of steam vessels, as required by law?

(Objected to as immaterial.)

A. A white light.

Q. And visible how many points on either bow?

(Objected to.)

A. The mast-head light is supposed to be visible all round, from starboard to port, forward and aft.

Q. How far should it be seen, as required by law, as you understand it, in clear weather?

(Objected to.)

A. Four or five miles.

Q. Is a tug-boat, in your judgment, a steam vessel?

A. I think she is.

Q. Located at the after flag-staff, would or would not, in your experience, the upper or lower light, or both, be obscured by the pilot-house or smokestack on the tug which was directly ahead of the vessel you were on?

(Objected to.)

A. No, sir.

89 Q. Do you mean to say that in all cases that have come under your observation that both of those lights are hung so high as to be above the top of the smokestack?

A. Yes, sir; it would be of no use to have lights if you didn't have them above the smokestack and pilot-house.

Q. What is the ordinary height of a smokestack on a tug?

A. They vary according to the size and power of the tug. None of them, I think, will average over 20 feet from the deck of the boat.

I should judge that the general average of the flag-staffs was from 25 to 30 feet high, probably more.

As a general thing they have the upper light just low enough from the truck of the flag-staff so as to swing clear of the flag-staff, as it is hung on the cord about three feet below the top of the flag-staff. The lower light is swung just low enough to clear the top light probably four or five inches, so that the bottom of one will clear the top of the other.

Q. And now do you mean to say that you have never found a lower light hung in the manner you have described, when either far off or close to you obscured by the smokestack?

A. If you could see the lights at all, you could see both of them.

This light is what I call a mast-head light—it shows all the way round.

Q. What do you understand the light on an ocean-going steamer to be called?

A. The foremast light, of course.

Q. How far do you understand that to be visible in fine weather?

(Objected to.)

A. Four or five miles.

Q. How many points on each bow?

(Objected to.)

90 A. All around, both forward and aft.

Q. Then is there any difference, in your judgment, in what you call a foremast light and a mast-head light? I am speaking of the lights and not of the locality in which they are placed.

A. There is no difference.

BENJAMIN SPRAGUE.

Sworn to before me this 17th day of May, 1878.

WM. D. JONES,
Notary Public for Kings County.

(Cert. filed in N. Y. Co.)

HENRY A. MASON, being duly sworn on the part of the appellant in each of the above cases, says:

I am a Hell Gate pilot; have been so for about 23 years. I have been piloting vessels of all kinds through the Gate during that time, by day and by night. I am familiar with the lights carried by different vessels.

Q. What lights do you find to be used to distinguish a tug-boat having a vessel or vessels in tow?

(Objected to as immaterial, irrelevant, and incompetent.)

A. They carry the usual lights, with the exception that instead of one light aft they carry two—one above the other; white lights.

Q. Did you ever see a tug-boat having a vessel or vessels in tow at night which carried two vertical lights forward?

(Objected to on same grounds.)

91 A. I don't remember of ever seeing a case.

Q. If you were navigating a sailing vessel at night, and should meet anywhere on the waters of New York a steam vessel, where would you look to find whether she had anything in tow or not?

(Objected to on same grounds.)

A. At the mast-head lights aft.

Q. Is there any general understanding on this point among navigators about New York?

(Objected to as immaterial and irrelevant in calling for the understanding of navigators about New York, in not specifying where they hail from.)

A. There is.

Q. What is it?

(Objected to on same grounds.)

A. That they shall have those lights set to distinguish a boat alone from a boat with a tow. By those lights I mean the stern vertical lights.

Q. Where do the navigators that you come in contact with about the waters of New York hail from?

(Objected to as calling for hearsay, and as immaterial and irrelevant.)

A. I know that they hail from all over the United States by the marks on their sterns. It is not from hearsay at all that I know it.

Cross-examination:

I know the schooner Jesse Williamson, jr. It strikes me that I have piloted her, but I won't be certain, through Hell Gate. If I did pilot her, it was not beyond Riker's Island, which is about two miles east of Hell Gate, the first limit. I have an indefinite remembrance of it. I

92 remember going to the vessel, but I can't say if she took me as pilot; can't say for certain.

Q. Which light on a tug is generally seen first?

A. The colored lights generally; they usually attract attention first. I suppose on a clear night you might see them two or three miles off; it depends a good deal on their height. I don't say they come into view first, but they attract attention first, because on the water you are looking out for steamboats, and so the colored lights catch your eye first generally.

Q. Which light on vessels carrying a foremast light is generally seen first in fine weather?

A. I don't understand what light you mean.

Q. By the foremast light, I mean the light carried at the foremast head of steam vessels?

A. That is something I am not familiar with.

Q. What lights are you familiar with?

Adjourned to Saturday, May 18th, 1878, at one o'clock p. m.

SATURDAY, *May 18th*—1.30 p. m.

Q. What lights are you familiar with on steam vessels?

A. I am familiar with all the lights on steam vessels; different steam vessels carry different lights.

Q. What is the difference in the lights of different steam vessels?

A. The difference is that harbor steamers, such as tow-boats, carry 4 lights; 2 range lights—1 forward, 1 aft, and 2 side-lights green and red. Seagoing vessels carry 3—2 side-lights and a forward light.

Q. That forward light is carried where?

A. At the mast-head in seagoing vessels; harbor vessels do not use the masthead lights.

(Last part objected to as not responsive.)

Q. What kind of a light is this mast-head light?

A. Bright white light.

93 Q. Referring to my original question, which was, "Which light on vessels carrying a foremast light at the mast-head is generally seen first in fine weather?"

A. The light that attracts my attention first is generally the red and green lights, but I suppose the white light can be seen furthest.

Q. Is there any defect in your eyesight?

A. None that I know of.

Q. And you are able to distinguish colors?

A. Yes.

Q. How much further can the white light be seen?

A. I should think two miles—probably three miles—further than a red or green light.

Q. What distance can you see a red light or green light?

A. Generally about two miles, if they are burning good.

Q. If there were two bright lights, one above the other, hung on the foremast, you would see one as soon as the other?

A. Most likely.

Q. Which can be seen furthest, the foremast light or a light on the stern?

A. I don't suppose there'd be much difference.

Q. Is a tug a steamboat?

A. Yes, sir; I suppose so.

Q. Is there any custom to carry lights on barges when they're in tow?

A. Yes, sir; there's a law to that effect, I believe.

Q. It has been your experience that barges do carry lights when they are in tow?

A. Yes, sir.

Q. What lights do they carry?

A. I don't know as I can tell how they all carry their lights; I couldn't answer; some carry them one way and some another.

94 Q. The mast-head light on ocean-going steamboats, how far on either bow is that, as you understand it, required to be visible?

(Objected to as immaterial.)

A. It ought to be seen from one or two points abaft the beam round to one or two points abaft the beam on the other side.

Q. Is it not screened so as to be invisible abaft those one or two points?

A. No, sir; not the mast-head light.

Q. Is there any difference between a foremast-head light on ocean steamers and the lights which you have spoken of as being hung on the after flag-staff, either in brilliancy or in range?

A. They are supposed to be of the same capacity of throwing the light; the mast would hide one, where the other could be seen; the fore light would be hid, while the after light would hang free all the time.

Q. Removing both those lights from the mast and the flag-staff, would there be any difference when placed on a table?

A. They are supposed to be the same.

Q. Do you mean to say that the foremast light on the steamer is not constructed with screens or with opaque substances, which prevent it being seen more than ten points on each side?

(Objected to as immaterial.)

A. I don't think they are constructed that way; I never saw any that way.

Q. Is it not your experience that one of the lights carried on the after flag-staff of tug-boats, when in range of the smokestack, may be obscured by the smokestack?

A. No, sir; not if they are put up according to law; they can't be obscured.

Q. Why not?

95 A. Because the law requires that they shall be twenty feet above any other light, and the smokestack doesn't reach as high as that.

Q. Do you mean the topmast light or the one beneath it?

A. I mean the stern light shall be twenty feet above any other signal light on the vessel.

Q. You don't mean that there shall be a space of twenty feet between the two lights on the after flag-staff?

A. No, sir.

Q. Then what do you mean?

A. The after light on the flag-pole shall be twenty feet above the green or red light on the pilot-house; the top light, if she carries two vertical lights.

Q. Is it not your experience that the colored lights on tugs are carried in boxes on top of the house or deck which covers the engine and engine-room, and such other rooms as there are on the tug?

A. They are carried alongside the pilot-house, on a line with the top of the house.

Q. How high, in your experience, above the smokestack is the highest white light carried?

A. It depends on the length of the smokestack; if the smokestack is twenty feet, they'd be on a level; if it was five feet, they would be fifteen feet above.

Q. What is your experience as to the difference in height between the highest white light and the smokestack?

A. I suppose there's a difference of ten or twelve feet, according to the height of the smokestack.

Q. What is the height of a smokestack?

A. From six to twelve feet, or more.

Q. What, in your judgment, is the height of the flag-staffs on which these after lights are hung?

A. No regularity to them.

Q. Do they range as high as fifty feet?

A. I think not.

96 Q. How high do they range?

A. I guess about forty-nine feet ten or eleven inches; I never measured one.

Q. Do you mean to swear that the after lights are twenty feet above the colored lights?

A. That is the law; they may not be always hung in that way; they may not be hung more than ten or twelve feet above.

Q. I have asked you for the results of your observation; how high above the smokestack the after lights on tug-boats are usually hung. Can you give it to me?

A. Some boats are larger and some smaller; it would be different on a larger and a smaller boat; if you name any particular boat I might give it to you.

Q. In testifying here on this subject, have you had in mind any particular boat?

A. I've been athinking about my own boat; that that would be a good one to take.

Q. Her name?

A. E. M. Barrett; she's out of existence now—burnt up.

Q. Have your answers which you have given on your previous cross-examination been based upon that or any other particular boat?

A. No particular boat.

Q. Has it been your practice to pay any particular attention to the comparative distances at which you could see the white lights—the lights hung on the after flag-staff of tug-boats—and those at the foremast-head of steamers?

A. I never paid any particular attention.

Redirect:

Q. How long have steam-vessels been in the habit of carrying the lights of which you spoke in your direct examination?

97 (Objected to as immaterial.)

A. I don't know as I could tell—several years. In 1875 was the last law that I know anything of in reference to them.

Q. Has there been any change in the manner of carrying the lights since that law?

A. Not that I know of.

HENRY A. MASON.

Sworn to before me this 18th day of May, 1878.

WM. D. JONES,
Notary Public for Kings County.

(Cert. filed in New York Co.)

Capt. PHILIP H. KIP, being duly sworn, says:

Q. You were the pilot of the Blanche Paige at the time of this collision?

A. I was.

Q. Do you remember the lights you carried that night?

A. Yes, sir.

Q. How they were hung?

A. Yes.

Q. How were the after lights hung?

A. About two feet apart—from one foot to one and a half feet from the top of the flag-staff.

Q. How were they hung with reference to the top of the smokestack?

A. I think they were above the stack—not positive.

Q. Can you tell the size of the lanterns?

A. I cannot; they were the regular lights that all steamboats and towboats use; they're all of one make, nearly.

98 (All after "I cannot" objected to as not responsive, not relevant, not material, by counsel for appellee.)

Q. How far could those lights be seen?

A. About three or four miles.

Q. How did they compare with the lights on the barge?

(Objected to.)

A. The barge's lights were higher; the barge's lights were the same kind of lanterns as ours was.

Q. At the time you turned Throgg's Neck, how far could the lights on the barge be seen?

(Objected to.)

A. From Old Ferry Point—that's about three miles.

Q. Was there anything to prevent a man on the schooner that came in collision with you who saw your stern light from seeing your after lights?

(Objected to as incompetent.)

A. No, sir.

Cross-examined:

Q. You were examined as a witness on the trial of this cause before Judge Blatchford?

A. Yes, sir.

Q. When you say you do not know the size of the lanterns on the after flag-staff, and that they were similar to those on the barge, have you ever compared the two?

A. Never have; but the lanterns all come out of one store. The lanterns are kept in Mr. Starin's store, and when we want lanterns we go up there and get them.

Q. Did you on the night of the collision give any signal to the schooner by whistle or otherwise?

A. No, sir.

99 Q. Did you, at any time prior to the collision, entertain any idea that there would be a collision between the schooner and the barge?

A. No, sir.

Q. How far off abreast from you did the schooner pass?

A. Between 450 and 500 feet.

Q. The combined length of your hawser and the barge was what?

A. I don't recollect what the barge was; the hawser was 80 fathoms; we used about 5 fathoms in making it fast at both ends.

his
PHILPI + H. KIP.
mark.

Sworn to before me this 18th day of May, 1878.

WM. D. JONES,
Notary Public for Kings County.

(Cert. filed in New York Co.)

PAUL JESSEN, being duly sworn, says:

Q. What is your business?

A. Storekeeper for Mr. Starin.

Q. How long have you been in that employ?

A. Seven years, sir.

Q. What duties had you in 1875 in relation to the lights on Mr. Starin's vessels?

A. I had to supply the boats with lamps and oil, and everything belonging to the lamps.

Q. Do you remember what lights the Blanche Paige had in Nov., 1875?

A. Yes, sir.

Q. What lights were they?

100 A. The kind of which I produce one; a No. 33 lantern.

Q. Whose make?

A. I couldn't say, sir.

Q. How far can these lights be seen in a clear night?

(Objected to.)

A. I can't say, sir.

(Globe measured; the largest swell of the globe of the lantern produced 5 inches in diameter.)

Q. How long before this collision had these lights been put on?

A. I should judge about two or three weeks before.

Q. What kind of lights did the barge have?

A. I couldn't say what kind of a lantern; but it was either the kind I have spoken of, or another kind (produced). This other kind is Wm. Porter's Sons', patented, used all over the harbor.

(Last part objected to as incompetent and not responsive.)

Cross-examined:

Q. Were you examined on the trial of this cause before Judge Blatchford?

A. Yes, sir; but not about the lights.

Q. How do you know that the first lantern produced is called No. 33?

A. Because I have the catalogue with the numbers of the lanterns that that man manufactures.

Q. What other numbers does that man have in his catalogue?

A. I couldn't say; this is the only number used in that employ.

Q. Do you mean used by Mr. Starin?

101 A. Yes, sir.

Q. What was the date at which you made the change in lanterns that you have spoken of?

A. Couldn't say the date; two or three weeks before the collision.

Q. What was done with the old lanterns?

A. After the lanterns were took off the tug-boats and steamboats we repair them and use them for dock purposes.

Q. Were they changed throughout all Mr. Starin's boats at the same time?

A. No, sir.

Q. How was it done?

A. Whenever we think the lanterns are not fit to use we change them.

Q. Then do you mean to say that the first lantern which you brought in was only substituted as fast as the ones which had been in use were worn out?

A. Yes, sir.

Q. How many lanterns were in use on each tug-boat, not including the colored lights?

A. Six; either five or six.

Q. All of the same pattern?

A. No, sir.

Q. How many of the pattern number one, produced?

A. Two, certainly, on the Blanche Paige. Can't say how many on each tug-boat; am only talking about the Blanche Paige now.

Q. For what reason were the lanterns changed on the Blanche Paige to the pattern you have first produced?

A. Because we thought it was a better lantern than the other one—would give a better light.

Q. Had you used it on any other tug-boat before the Blanche Paige?

A. Yes, sir.

Q. Which one?

102 A. Two or three of them; the Vanderbilt for one.

Q. For how long a period had you used it on the Vanderbilt before you put it on the Blanche Paige?

A. About two or three weeks, I should think.

Q. What was the superiority? How was it better than the other?

A. The crew on the Vanderbilt said it would burn better.

Q. Was the Blanche Paige the next you put it on after the Vanderbilt?

A. Couldn't say for certain; I think she was.

Q. What impresses your memory with the idea that the Blanche Paige was second?

A. I said I could not say for certain; I thought she was.

Q. Which vessel do you think was third?

A. Couldn't say, there are so many tug-boats.

Q. How long was it before you had made the change in the entire fleet of tug-boats?

A. Can't say, sir.

Q. Do you mean to say that the lights which had been used on the Blanche Paige had worn out before you made the change?

A. Worn out as far as we wear them on the tug-boats, sir.

Q. What do you mean by that?

A. One would get worn out—out of shape, same as that one is; then we take 'em off.

Q. Do you mean to say that if one was good and the other was bad or worn that you put one new one in place of the bad one, or two new ones on and took both the old ones away?

A. The mate of the Blanche Paige came up with his two lanterns, and asked me to change them, because he was going up the Sound. I do not think the old lanterns were completely worn out.

103 Q. Who made the first purchases of these lanterns for Mr. Starin?

A. Mr. Corlies, as far as I remember.

Q. Did you have charge of that first purchase?

A. Yes, sir.

Q. How many were there in that first purchase?

A. Couldn't say.

Q. What season of the year was it in?

A. In the latter part of the summer, I think.

Q. Were those the lanterns that were put on the Vanderbilt?

A. I remember putting one on the Vanderbilt.

Q. How many did you have left in stock when that one was put on?

A. Couldn't say.

Q. Did you have any?

A. Yes, sir.

Q. Was there enough in that first purchase to supply the fleet?

A. No, sir.

Q. What kind of lanterns did you have for the barges?

A. Same two kinds as them, sir.

Q. And was it the first pattern or the second that was in use on the barge at the time of the collision?

A. Can't remember, sir.

Q. Have you any recollection of supplying the new kind to the barge Burden before the collision?

A. No, sir.

Q. Isn't that same pattern as the one first produced used in the engine-room on your tugs?

A. By this time they're used 'most all over, sir.

Q. Then at the time of this collision, on the Blanche Paige there was a lantern either similar to the first or the second one used in the engine-room?

A. I think similar to the second one.

104 Q. Do you intend to swear that you know of your own knowledge that a lantern or lanterns similar to the first or new pattern was hung on the flagstaff of the Blanche Paige at the time of the collision?

A. No, sir.

Redirect:

Q. What was the name of the mate?

A. I can't say his name; that is the man (Mr. Charles Fowler) before me now.

Recross:

Q. You knew, did you not, when you were examined on the trial of this cause, as much about the lanterns as you know now?

A. Yes, sir.

PAUL JESSEN.

Sworn to before me this 18th day of May, 1878.

WM. D. JONES,
Notary Public for Kings County.

(Cert. filed in New York Co.)

CHARLES FOWLER, being duly sworn, says:

Q. You were examined on this trial before?

A. Yes.

Q. Do you remember, shortly before the collision, getting any new lanterns for the Blanch Paige?

(Objected to as leading.)

A. Yes.

Q. What do you remember about that?

(Objected to, that the former question has indicated to the witness what was called for.)

105 A. When I was up in the store one night after some oil I noticed this kind of lantern (pointing to pattern No. 1); I asked Paul if he *he* wouldn't give me some like those if I brought my old ones; he said yes; I didn't get them that night; we went to New Haven that night, and when we came back we stopped at the pier, and I got two new lanterns.

Q. How long was that before the collision?

A. About four or five weeks, I think.

Q. Was there any change in the lights used on the Paige up to the time of the collision?

A. No, sir.

Q. What kind of lights were the two lights which were hanging on the flagstaff aft at the time of the collision?

A. Two lamps like that (pointing to No. 1).

Q. How do you know?

A. Because I put them there, sir.

Q. Do you remember who put up the other lights on the Paige that night?

A. Yes, sir.

Q. Who was it?

A. Me, sir; I put 'em all up.

Q. Can you tell how far such lights as those can be seen in a dark, clear night?

(Objected to, no foundation laid, incompetent.)

A. I should say three to four miles, easy.

Q. How were the after lights hung on the flagstaff?

A. One under the other; about eighteen inches or two feet apart, fastened to a halyard which led from the top of the flagstaff forwards.

Q. How did they hang with reference to the top of the smokestack?

A. Over the smokestack, about four or five feet; both of them.

106 Q. Was there anything in the way to prevent a man on the schooner Williamson who saw the head-light and side-light from *from* seeing those two stern lights?

A. No, sir.

Cross-examined:

Q. How high is the smokestack on the Blanche Paige?

A. Couldn't say, sir; sixteen or eighteen feet, maybe twenty feet; she has got a pretty high smokestack.

Q. How high is the house on deck?

A. About seven feet; seven feet six.

Q. Whereabouts is the flag-staff on her?

A. On the after part of the house. Outside of the after part. It runs from the deck. Half the length of the house aft from the smokestack; can't say how many feet. The halyard is made fast to the shackle of the middle guy of the smokestack on the port side. I had been mate about eight months at that time. I went to the store just when I wanted any oil and little supplies, maybe on an average twice a week. I saw these lanterns hanging up in the store-room. That was the first time I had seen them there. I hadn't seen them on any other boats of our line. It was about two trips, four days after I first saw them, that I got them. The other lanterns had nothing the matter with them. These were larger. The pattern No. 1 burns better in the wind and show' a better light. In the old pattern the wind would draw through the top and put 'em out, unless you put a cloth around 'em at the bottom. I had been using the old pattern, I should say, six months. I had not reported this trouble of their being blown out by the wind. I don't know how they came to get the new pattern. Of the old pattern we had had three on board the Blanche Paige when we were running. Of the new pattern I got two. My

107 attention was first drawn to the style of lantern I was carrying on the Blanche Paige at the time of the collision, the last time I was on trial, when I was a witness before. I didn't tell the counsel for Mr. Starin as much about them as I have now. I wasn't questioned so much then. I never told anybody that the barge was carrying the same kind of lights that I had. I never told anybody the barge was carrying lights different from mine.

Q. When you say that the lights were on the after flag-staff, do you mean that either of the lanterns were at the top?

A. The top lantern was about four inches from the truck. By the truck I mean the top of the flag-staff.

Q. Was it fastened to the halyard by the swinging handle?

A. One part of the halyard was fastened to the handle and the other part went through it. The lantern was only fastened to the halyard by the handle.

Q. How far forward of where the flag-staff stood was the halyard made fast to the shackle of the chain of the smokestack?

A. A little over half the length of the house. I don't know exactly the length of the house; from 12 to 14 feet.

Q. How far below where the upper lantern was made fast on the halyard was the other lantern made fast?

A. A foot to a foot and a half.

Q. How far was it from where the lower lantern was made fast to the shackle?

A. I can't tell; I don't know the length of the flag-staff.

Q. Have you ever got new halyards for that flag-staff?

A. Yes, sir; always carry two sets already rove off.

Q. What length do you get?

108 A. Twelve fathoms.

Q. How much spare have you when made fast to the halyard?

A. A fathom of the bight—the double of it.

Q. You mean to say it's 11 fathoms of halyard—double 5½—from the top of the flag-staff to the shackle?

A. Yes, sir.

Q. How high above the deck is that shackle?

A. From the house 5 inches.

Q. Is the top lantern hung so as to swing clear of the flag-staff?

A. Yes, sir.

(Admitted that patern No. 1 stands sixteen inches from the bottom to the top of the handle.)

Redirect:

Q. As the lanterns were hung at the flag-staff aft, was there any interference with the light of one by the other?

A. No, sir; the globes of the lamps were always hung one underneath the other. The oil we used was signal oil.

CHAS. FOWLER.

Sworn to before me this 18th day of May, 1878.

WM. D. JONES,
Notary Public for Kings County.

(Cert. filed in New York Co.)

109 BENJAMIN MORRISON, being duly sworn: I was examined as a witness in the court before. I remember the lanterns that hung on the barge.

Q. How did they compare with these two lanterns now shown you?

(Objected to as incompetent.)

A. There was two like that (No. 1), and one like that (No. 2). The two that were hung up were like No. 1, and the one like No. 2 was kept below.

Cross-examined:

Q. How long had the new pattern been on board?

A. Don't remember whether it was one week or two before we were struck. Captain Yost sent them aboard; I don't know where they came from.

Q. Who took care of them?

A. I did—cleaned 'em myself.

Q. Did you see the lanterns on the tug?

A. I saw the stern light on the tug.

Q. What did you do to the lanterns in cleaning and trimming them?

A. I put the globe in soap and water, and washed it; then took out the lamp, trimmed the wick with scissors, and filled it with oil.

Q. Are you in Mr. Starin's employ now?

A. Yes, sir.

Q. Where is Captain Yost?

A. I don't know, sir; he is not in Mr. Starin's employ now. I have been aboard the Saginaw before the Burden; on no barge since. I have been aboard the John H. Starin, a steamboat; I think they use the same kind of lamp on her; I don't have much to do with the lamps on
110 board her; I think they are the same. Sometimes I have seen the old kind to blow out. I have never known the new kind to blow out—never.

BEN. MORRISON.

Sworn to before me this 18th day of May, 1878.

WM. D. JONES,
Notary Public for Kings County.

(Cert. filed in N. Y. Co.)

WILLIAM F. BAKER, being duly sworn:

I was pilot on the Blanche Paige at the time of the collision. I was examined as a witness before.

Q. What kind of lights were the stern lights on the Blanche Paige?

A. They were two white lights, one above the other.

Q. What kind of lanterns?

A. Ordinary lanterns—white globe lanterns.

Q. How did they compare with these?

A. They were as big as that one (No. 1).

Q. How far in a clear, dark night can a light, such as No. 1, be seen?

(Objected to as incompetent.)

A. Four or five miles, I should judge.

Q. How were those lights hung that night, with reference to the top of the smokestack?

A. I should judge six or eight feet above the smokestack.

Q. Did either of those stern lights on the Paige go out that night?

A. No, sir.

111 Q. Was there anything to prevent a man on the schooner Williamson, who saw your head-light and side-light, from seeing your two stern-lights, if he had looked?

(Objected to.)

A. No, sir; nothing in the way whatever.

Q. How would the lights that the barge carried that night compare as to brilliancy with this lantern No. 1?

A. They compared with the Paige's lights as near as you could tell. The brilliancy appeared to be the same.

Q. Have you seen the stern-lights that are usually carried by other steamers?

A. Yes, sir.

Q. How do they compare with No. 1?

(Objected to.)

A. They compare about the same, in size and brilliancy.

Q. How long have you been steamboating about the harbor and Sound?

A. Twenty or twenty-five years.

Q. Did you ever see a tug-boat with a vessel or vessels in tow, that carried two vertical lights forward?

(Objected to.)

A. No, sir.

Cross-examined:

Q. Have you ever seen vessels carrying one light forward?

A. Why, they always carry a head-light.

Q. Have you seen them carrying a light at the mast-head?

A. What they call ocean steamers—outside.

Q. When you say that the light on the barge compared with the light on the Paige, do you mean that the light or the lantern was the same?

112 A. I compared the lights; I never saw the lanterns on the barge.

Q. Did not the lights on the barge, or one of them, go out?

A. I think there did; soon after sundown.

Q. How long had they been burning at that time?

A. Probably three quarters of an hour.

Q. Was the wind strong enough that night to put out a light in a lantern?

A. Yes, sir.

Q. Hanging on your halyards, at your after flag-staff, was there anything to hinder lanterns from swinging?

A. The halyards were made fast—were taut, and they wouldn't swing much.

Q. How high was the flag-staff of the Blanche Paige from the main deck?

A. Somewhere in the neighborhood of 25 feet.

Q. How near the top of the flag-staff was the highest lantern hoisted?

A. I should judge six or eight inches.

Q. And how close did it hang to the flag-staff?

A. Probably a foot.

Q. Was it so close to the flag-staff that it could knock against it?

A. No, sir.

Q. What was the length of the halyard from the place where the upper lantern was made fast, to the place where it was made fast to the guy of the smokestack?

A. Perhaps 20 feet.

Q. Are you prepared to swear, of your own personal knowledge, that the Blanche Paige had, on the night of the collision, two lanterns of a pattern similar to the one now shown you (new pattern, No. 1?)

A. I didn't examine the lanterns closely enough for that.

113 Q. Do you know what was the purpose of making a change in the lanterns?

A. No, sir.

Q. Had you ever made any complaint to the owners of the Blanche Paige concerning the liability of pattern No. 2 to blow out?

A. No, sir.

Q. Did you know of the employment of a rag tied around it to keep it from blowing out?

A. No, sir.

Q. If such rag had been used would you have known of it?

A. I might, and might not. They would have been more likely to report to the captain, unless I had made some complaint.

Q. Did you know of any change made in the lanterns of the Blanche Paige?

A. No, sir.

Q. Did you or did you not take interest in the character of the lights on the Blanche Paige?

A. Not particular; I saw they were good lights; I had no reason to complain about 'em.

Q. You mean to say that you didn't consider it a subject of complaint that one of your signal-lamps was liable to blow out?

A. They wasn't liable to blow out, as I know of.

Q. Haven't you just testified that you knew that the pattern No. 2 would blow out?

A. They might blow out in a gale of wind; as long as they didn't go out it was all right; we were keeping proper lights.

Q. Had you known barges' lights to go out before?

A. At different times, in heavy weather, yes, sir; not this particular barge; we towed other barges.

Q. Had you complained about those lights?

A. No, sir. To the owners?

Q. To anybody who had authority to correct it?

114 A. I complained to the barge, and they would light 'em again.

Redirect:

Q. Did it blow hard enough that night to blow out any light on the Blanche Paige?

A. It might, if they hadn't been properly trimmed; it did not blow any out; they did not go out on the Paige.

WM. F. BAKER.

Sworn to before me this 18th day of May, 1878.

WM. D. JONES,
Notary Public for Kings County.

(Cert. filed in New York Co.)

(Endorsed:) U. S. circuit court. John H. Starin vs. the sch'r Jesse Williamson, jr., the s. t'g Blanche Paige, & barge James A. Burdin ads, William H. Sise & al. Depositions of witnesses taken on appeal for appellant. Benedict, Taft & Benedict, app'l'nts' proctors, 64 Wall st. U. S. circuit court, N. Y. Filed June 8, 1878. John I. Davenport, clerk.

115 U. S. circuit court, southern district of New York, in the second circuit.

JOHN H. STARIN, LIBELLANT & APPELLANT,
aga'st
THE SCHOONER JESSE WILLIAMSON, JR., HER tackle, &c., William H. Sise, Ichabod Goodwin, Daniel Marcy, George Annable, G. F. Melcher, C. A. Hazlett, John A. Holbrook, George T. Vaughan, Charles H. Chase, John W. Moses, William R. Preston, George W. Pendexter, William Downs & Son, A. A. Payne, B. F. Webster, Mathew B. Vennard, and Horace M. Seawards, claimants & appellees.

Bill of exceptions.

This cause came on for trial before the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at a term
116 of the circuit court of the United States in and for the southern district of New York, in the second circuit, on the 10th and 13th days of June, 1879, on the appeal by the libellant from the final decree of the district court of the United States for the southern district of New York, dismissing the libel of the libellant herein.

Counsel for the libellant read the libel, and counsel for the claimants read the answer as the same were contained in the apostles transmitted from said district court to said circuit court.

Counsel for libellants then put in evidence the testimony taken and the depositions read on behalf of the libellant in the district court as the same were contained in the apostles, it being considered that the counsel
117 for libellant read the direct examination, and that counsel for claimants read the cross-examination.

Counsel for the claimants then put in evidence the testimony taken and the depositions read on behalf of the claimants in the district court as the same were mentioned in the apostles, it being considered that the counsel for claimants read the direct and counsel for libellants read the cross-examination.

Counsel for libellants also put in evidence the depositions of the following witnesses, taken in the circuit court, and on file in the said circuit court, viz: Benjamin Sprague, Henry A. Mason, Philip H. Kip, Paul Jessen, Charles Fowler, Benjamin Morrison, and William F. Baker, it being considered that said counsel for libellant read the direct and that counsel for claimants read the cross-examintion.

118 Here the testimony was closed. Counsel for libellant thereupon proposed on his behalf the following findings of fact and conclusions of law to be found by the court, viz:

119 U. S. circuit court.

JOHN H. STARIN
agt.
SCHOONER JESSE WILLIAMSON, JR.

WILLIAM H. SISE ET AL.
agt.
STEAM-TUG BLANCHE PAIGE AND BARGE JAMES A. BURDEN, &c.

Proposed findings of fact on the part of the appellants.

First. That on the evening of the 2d day of November, 1875, the barge James A. Burden was in tow of the tug Blanche Paige, on a hawser about 80 fathome long, bound on a voyage from New Haven to New York.

120 Second. That the tug carried a white head-light, a red light on her port side, and a green light on her starboard side, and two globe lanterns on a flag-staff aft, the upper one about four feet from the top and the other about two feet lower.

Third. That the barge carried two globe lanterns on a flag-staff aft, one over the other, about two or three feet apart.

That the lights on the tug and on the barge were of such a description as is required by law and by the regulations.

Fourth. That the lights on the tug and those on the barge were burning brightly from the time they turned Throgg's Point till the collision with the Jesse Williamson, jr.

Fifth. That the lights on the tug were properly placed.

Sixth. That the lights on the barge were properly placed.

Seventh. That the tug was in charge of a competent pilot, who was attentive to his duties, and had a competent and attentive lookout.

Eighth. That the barge had a competent man at her wheel, who was also attentive to his duties.

Ninth. That just after rounding Throgg's Point in the East River, the red light of the schooner Jesse Williamson, jr., bound east, was discovered by the pilot of the tug about a point on the port bow of the steam-tug.

121 Tenth. That at the time the schooner was so seen the said barge in tow of said tug was following after the said tug in almost a straight line, but heading a little to the windward of her.

Eleventh. That said schooner passed said tug on the *the* port hand of said tug at a distance of several hundred feet.

Twelfth. That from the time when the schooner was so abreast of the tug there was nothing which could be done by the tug to avoid the collision which followed, except to keep on, and there was nothing that could be done by the barge except to port her wheel, and hail, which was done.

Thirteenth. That at the time, the schooner was at such a distance from the barge, and heading on such a course, as would have carried her under the stern of the barge if she had not come nearer to the course which the barge was pursuing.

Fourteenth. That if the schooner was not then heading so as to pass

under the stern of the barge she was at such a distance from the barge as to have abundant room to go under her stern by then porting her wheel.

Fifteenth. That neither the vertical lights of the tug nor the lights on the barge were seen by any one on board the schooner.

Sixteenth. That the mate of the schooner, who had been on the lookout, was called aft before the schooner was abreast the tug, and the men who had been forward were also sent aft, and the schooner was then left without a lookout.

122 Seventeenth. That no proper lookout was kept on said schooner and no proper care was taken in reference to the navigation of said schooner.

Eighteenth. That the barge was not seen by any one on board the schooner, nor was the fact of her presence known to any one on the schooner until the vessels were so near that there was no longer time for the schooner, by porting, to get under the stern of the barge.

Nineteenth. That the master of said barge, as soon as he saw that there was danger of a collision between the schooner and the barge, put his helm hard to port and hailed the schooner to keep away from said barge, which she could have done, but those on the schooner paid no attention to such hail and did not change her course away from said barge.

Twentieth. That said schooner ran into said barge and struck her on the port side aft, breaking in the cabin, tearing down the wood, and bringing the same down on the stove, and thus setting the barge on fire, so that she was burned to the water's edge, and became with her cargo on board a total loss.

Twenty-first. That the night was a bright night, and vessels could be seen a long distance, and the wind was blowing fresh from the northwest, and the schooner was sailing at a rapid rate.

Twenty-second. That at the time of the collision the said barge was to the westward of Throgg's Point, and she was heading, if anything, to the northward of the course of the said tug and not to the southward of the same.

Twenty-third. That the said barge and tug had all the regulation lights properly set and burning brightly.

123 Twenty-fourth. That everything was done by those on board of said tug and said barge to avoid said collision that could be done.

Twenty-fifth. That the schooner was not unnecessarily delayed by reason of the collision for more than five days.

Proposed conclusions of law.

First. That the lights as placed on the tug were placed as required by law.

Second. That the lights as placed on the barge were placed as required by law.

Third. That there was no fault on the part of the said barge, or of the tug, or of those in charge of either of them.

Fourth. That said schooner was improperly navigated.

Fifth. That the schooner did not keep a proper lookout, and therefore did not see the said barge in time to avoid a collision.

Sixth. That the schooner was negligent in that she did not go under the stern of the barge.

Seventh. That said collision was caused by the carelessness of those on board of and in charge of said schooner.

124 Eighth. That the decrees of the district court should be reversed, and a decree made dismissing the libel against the Blanche Paige and the James A. Burden with costs, and a decree made condemning the schooner to pay the damages sustained by the barge with costs.

Ninth. That the amount of damages decreed to the owners of the schooner is too large and should be reduced.

BENEDICT, TAFT & BENEDICT,
Appellants' Proctors.

R. D. BENEDICT,
Advocate.

The court filed with the clerk of said circuit court the findings of fact and conclusions of law, as found by the court in the form following, viz:

125 JOHN H. STARIN,
vs.
THE SCHOONER JESSE WILLIAMSON, JR.

WILLIAM H. SISE AND OTHERS,
vs.
THE STEAM-TUG BLANCHE PAIGE & THE BARGE James A. Burden, &c.

Facts found by the court.

1. About half past seven o'clock in the evening of November 2d, 1875, a collision occurred in the East River, near Throgg's Neck, between the schooner Jesse Williamson, jr., owned by the libellants, in the second of of the above-entitled suits, and the barge James A. Burden, in the tow of the tug Blanche Paige, both owned by the libellant in the first suit.

2d. The evening was clear but dark, and the moon had just set;
126 the wind was heavy from the northward and westward.

3d. The schooner was loaded with coal, and on a voyage from Port Johnson, New Jersey, to Portsmouth, New Hampshire. Her crew consisted of a captain, mate, three seamen, and a cook. Her regulation lights were properly set and burning.

4. The tug was on her way from New Haven to New York, and towing the barge astern by a hawser at least seventy or eighty fathoms long. The length of the barge was one hundred and twenty or one hundred and thirty feet.

5. The lights of the tug were as follows: a white head-light forward; a red light on the port side, a green light on the starboard side, and two white globe lanterns on the flag-staff aft, hung one above the other.

127 The lights aft were not of a character to be visible on a dark night, with a clear atmosphere at a distance of five miles, and were not otherwise constructed or fixed as mast-head lights. The barge had two white globe lanterns, hanging one above the other from her flag-staff, burning dimly, but no other lights whatever.

6th. The speed of the tug with her tow was five or six miles an hour, and that of the schooner somewhat more.

7. The usual course from the east around Throgg's Neck is SW. by S. to the point, and then around the buoy to W. NW. In this case the tug, when she rounded the buoy, hauled a point or a point and a half further north on account of the wind.

128 8. The schooner was steering so as to make Throgg's Point as close as she could with safety, because when she rounded the point she would be compelled to come up more into the wind. She had on deck her captain, mate, and three seamen. The mate was on the lookout and the two seamen were forward with him. The capt. was aft and the third seamen at the wheel. The mate on the lookout saw and reported the green light of the tug off the port bow, then the white head light, then the red light, and finally the green light shut out. No other lights were seen. After the captain called the mate aft and went forward on the lookout himself. Soon after getting forward he sent the seamen to tend the main sheets on rounding the point. The schooner passed the tug port to

129 port at a safe distance, and steadily kept her course.

9. The red light of the schooner was seen from the tug about the time of passing the buoy. This was when the tug's lights were first discovered from the schooner. The vessels could not then have been more than a mile apart, if as much as that. The red light of the schooner was alone seen from the tug.

10. Immediately after the seamen were sent aft the captain saw the hull of the barge loom up close by out of the darkness and angling across the schooner's bow. He saw no lights. This was the first time that the barge, or anything on her, had been seen from the schooner. The wheel was at once put to port, but not in time to avoid a collision. The

130 schooner struck the barge on the port side, fifteen or twenty feet forward of the stern. The blow knocked down the stanchions and joiner-work, which caught fire from a stove. The barge was partially burned, and sunk with her cargo on board.

11. As soon as the man at the wheel of the barge saw by the way that the schooner was coming that a collision was possible he ported his wheel, and then when the schooner lapped the barge starboarded it, hoping to swing the stern off.

12. The commissioner's report as to damage is supported by the evidence.

13. Rule IX of the rules and regulations of the supervising

131 inspectors, appointed under the authority of the act of February 28th, 1871 (Rev. Stat., secs. 4405 & 4412), is as follows:

"Steam-vessels, when towing other vessels, shall carry two bright white mast-head lights vertically, in addition to their side lights, so as to distinguish them from other steam vessels. Each of these mast-head lights shall be of the same construction and character as the mast-head lights which other steam vessels are required to carry; and in addition to the lights herein referred to, when engaged in towing canal boats & barges, or both, as is customary on the Hudson and other rivers, white lights shall also be carried on the extreme outside of the tow on either hand, and also on the extreme after part of the same."

This rule was approved by the Secretary of the Treasury.

132 *Conclusions of law.*

1. The tug was in fault for not carrying two bright white mast-head lights vertically, as required by Rev. Stat., sec. 4233, rule 4.

2. The schooner was not in fault.

3. The libellants in the case of Sise et al. are entitled to recover $1,076.74, with interest on $627.86 from Nov. 26, 1875, and on $446.88 from Nov. 20, 1877, at six per cent. per annum, and costs.

WAITE, *Ch. J.*

And also filed with said clerk his opinion as follows, viz:

Opinion.

133 The only question which I think it necessary to consider in the case is whether the tug carried "two bright mast-head lights vertically," or their legal equivalent.

Rule 4 of the statutory navigation rules, Rev. Stat., sec. 4233, provides that, "Steam vessels, when towing other vessels, shall carry two bright white mast-head lights, ve'tically, in addition to their side lights, so as to distinguish them from other steam vessels. Each of these mast-head lights shall be of the same character and construction as the mast-head lights prescribed by rule 3;" that is to say, "A bright white light, of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least five miles, and so constructed as to show a uniform and unbroken light over an arc of the horizon of twenty points
134 of the compass, and so fixed as to throw the light ten points on each side of the vessel, namely, from right ahead to two points abaft the beam on either side." Rule 3.

Such a light must be carried at the foremast head of an ocean-going steamer, or a steamer carrying sail. Steam vessels not carrying sail, and navigating bays, lakes, rivers, or other inland waters, are required to carry, in addition to their colored lights, "A central range of two white lights; the after light being carried at an elevation of at least fifteen feet above the light at the head of the vessel. The headlight shall be so constructed as to show a good light through twenty points of the compass, namely, from right ahead to two points abaft the beam on either side of the ves-
135 sel and the after light so as to show all around the horizon." Rule 7.

This tug could not carry a light at her mast-head, for she had no mast, but she could carry two bright white lights vertically, of a character to be visible five miles away, on a dark night with a clear atmosphere, and so constructed as to show a uniform and unbroken light ahead, and from ten points on one side to ten points on the other of the vessel. This would be a light of the character and construction which ocean steamers carrying sail are required to have at their foremast head. I deem it unnecessary to decide in this case whether, if two lights of a power equal to what is required for mast-head lights, are suspended veritically on the flag-staff, at
136 the stern of a tug, in such a manner as to show a uniform and unbroken light ahead, over an arc of twenty points of the compass, they would be the legal equivalent of two mast-head lights, for I am clear that unless there are two lights of that power & efficiency carried vertically somewhere on the vessel, rule 4 is not complied with.

That such lights were not carried on this tug is very apparent from the evidence. It is conceded that ordinary globe lanterns only were used. The mate, when acting as lookout on the schooner, must have been vigilant. He saw first the green light, then the white light at the head, then the red and then the green shut in, as the tug approached and rounded the buoy and put herself on her course down the river. The head-
137 light was seen while those from the flag-staff were not. The presumption is that the light ahead was such as was required by rule 7, and, therefore, of the same character and construction as that prescribed by rule 3 for the mast-head. As that light was seen, the conclusion is inevitable that the stern lights were not of the same power, or were not so placed as to present the view which the law required. This, under the circumstances, is not only a fault in law but a fault in fact. The schooner, while to my mind in all particulars vigilant, was not actually informed that she was to meet a tow until the hull of the barge loomed up out of the darkness immediately ahead almost at the very moment of the collision. Clearly, if the circumstances are such as to make it proper
138 for a tug to keep a tow four or five hundred feet away from her, she should be especially careful not only to notify approaching vessels that a tow is following, but, as near as may be, where it is. A sailing vessel must hold her course while a steamer is keeping out of her way in passing, but this obligation continues only so long as the steamer is passing. The sailing vessel should, therefore, be told where the steamer is, and as for the purposes of this rule the tug and her tow are to be considered as one vessel, and that the tug, it is necessary that the required information should extend to both the tow & tug. In the day-time the tug may assume that both will be seen from the sail-vessel, and act accordingly, but at night, and in the dark, this is impossible, and
139 consequently the law has supplied a system of arbitrary signals intended to make up for the loss of vision by day. If these signals are omitted, and the sailing vessel comes into collision for want of them, the loss must fall on the tug, where the fault lies.

There can be no doubt that this collision was caused in part at least by a want of proper towing lights. Had the schooner been told in the appropriate way of the approach and presence of a tug and tow, she would have watched as well for the tow as the tug, and if she found the tow driven out of its course, as this *was* undoubtedly was by force of the wind or otherwise, take, some measures herself to prevent a col-
140 lision. From the manner in which this schooner was navigated I have no doubt whatever if she had known that a tow was following the tug the loss never would have happened. She was keeping up as close to Throgg's Point as she could, in order to take advantage of the wind and save herself from going off too much to leeward when she got by. There was room enough for her to keep off, and there can be no reasonable doubt that she would have done so had she known it was necessary. Not knowing of the barge, she held her course, as she certainly had the right to do with the information she had. In this I recognize fully the rule that while a tug must keep herself, as well as her tow out of the way, a sailing vessel is not permitted to run down
141 a tow if it gets beyond the control of the tug and she can, with reasonable effort, avoid it.

Holding as I do that a tug while towing in inland waters must exhibit vertically two bright white lights of equal power with the mast-head lights of seagoing steamers, so fixed as to present a uniform and unbroken light right ahead and ten points on either side, and that this tug was in fault in that particular, it is unnecessary to enquire whether rule IX of the board of supervising inspectors has the force of law as a rule of navigation. By sec. 4412, Rev. Stat., the board has the right to "establish such regulations to be observed by all steam vessels in passing each other, as they shall from time to time deem necessary for safety." And by sec. 4405, these rules when approved by the Secretary of the Treasury,
142 "have the force of law." The statutory navigation rules, sec. 4233, rule 8, prescribe lights for sailing vessels while being towed, but omit any provision for canal-boats, barges, &c., when towed, as is customary in rivers and other inland waters. This is an important omission, and if there is really any doubt as to the power of the board to bind towing steamers by this rule in passing sailing vessels, the necessary legislation to remedy the defect should at once be obtained. The absolute necessity there is for some such rule must certainly be acknowledged if tugs are permitted to separate themselves long distances from their tows, and then make up the tows of any size or form they please.

143 I see no reason for disturbing the report of the commissioner as to the amount of damages.

A decree may be prepared dismissing the libel of Starin, with costs in both courts, and in favor of Sise and others, for $1,076.74, and interest on $627.86, from November 26, 1875, and on $446.88 from November 20th, 1877, at six per cent., that being the amount allowed by the commissioner.

That thereafter the counsel for libellant proposed to the said judge the following additional requests to find, viz:

First. He requests the judge to find that rule VII of the rules & regulations of the supervising inspectors, appointed under the authority of the act of February 28th, 1871, is as follows:

144 "VII. All steamers rigged for carrying sail when under way, must carry a bright white light at the foremast head, and all other steamers must carry a bright white light on the stem or near the bow, and another on a mast near the stern, the last named being at an elevation of at least twenty feet above all other lights on the steamer. All steamers must carry a green light on the starboard side and a red light on the port side."

This rule was approved by the Secretary of the Treasury.

Second. He requests the judge to find that the lights which were actually in use upon tug-boats engaged in towing vessels on the waters of New York, the East River, and the sound at the time of the collision in question, and for a long time before, were a white light on the stern and
145 two high white lights on a flag-staff aft, and the red and green side lights.

Third. He requests the judge to find that no instance was proved in the case of any tug-boat engaged in the business of towing other vessels which carried the two vertical lights required to be carried by such tug-boats in any other place than on a flag-staff aft.

Fourth. He requests the judge to find that it was the general understanding of navigators on sailing vessels and steam vessels on the waters

where this collision took place, and it had been such general understanding for a long time before the said collision that tug-boats engaged in towing other vessels indicated the fact that they were so engaged by
146 carrying at night two lights vertically arranged on a flag-staff aft.

Fifth. He requests the judge to find that by the general usage and understanding of navigators upon the waters where and at the time when this collision occurred, the mode of determining whether a steam vessel approaching at night had another vessel in tow or not, was to look at the high after lights, and that if such high after light was a single white light it would indicate that the steam vessel did not have anything in tow, while if such high after lights were two lights placed vertically, it would indicate that such steam vessel was a tug-boat with another vessel in tow.

147 Sixth. He requests the judge to find that no one of the officers or crew of the schooner Jesse Williamson, jr., looked at the after lights of the Blanche Paige to see whether she carried one after high light or two.

Seventh. He requests the judge to find that the two lookouts on said schooner did not either of them look to see the after lights of the Blanche Paige, and did not take any notice of them whatever.

Eighth. He requests the judge to find that if any one of the officers or crew of the schooner Jesse Williamson, jr., had looked to see what were the after lights of the Blanche Paige, he could have seen before the schooner got up abreast of the Blanche Paige, that the said tug carried two white lights arranged vertically on a flag-staff aft.

148 BENEDICT, TAFT & BENEDICT,
Lib'ts Proctors.

The court thereupon found the following further facts:

Further facts found by the court at the request of the libellant.

1. Rule VII. of the rules and regulations of the supervising inspectors, appointed under the authority of the act of February 28, 1871, is as follows:

Rule VII. All steamers rigged for carrying sails when under way must carry a bright white light at the foremast head, and all other steamers must carry a bright white light on the stern or near the bow, and another on a mast near the stern, or on the flag-staff at the stern, the last named being at an elevation of at least twenty feet above all other lights
149 on the steamer. All steamers must carry a green light on the starboard side and a red light on the port side.

This rule was approved by the Secretary of the Treasury.

2. From the evidence it appears to have been the practice of tug-boats engaged in towing in the waters of New York, East River, and Long Island Sound, at the time of and before this collision, to carry their vertical lights on the flag-staff aft. A single white light was carried forward and the red and green lights at the sides. There was no proof of any case in which the vertical lights were carried at the bow.

Oct. 28, 1879.

M. R. WAITE, *Ch. J.*

And thereafter, and on the 11th day of November, 1879, counsel for the libellant filed in the office of said clerk, and served upon
150 claimants' proctors, exception to said findings of the court and to the failure of the court to find as requested, as follows:

151 *Libellant's exceptions.*

U. S. circuit court.

JOHN H. STARIN
vs.
THE SCHOONER JESSE WILLIAMSON, JR., &c.

The libellant herein files exceptions to the findings of the court and to the refusals of the court to find, as follows:

First. He excepts to the first conclusion of law as found.

Second. He excepts to the second conclusion of law as found.

Third. He excepts to the third conclusion of law as found.

Fourth. He excepts to the refusal to find the first proposed conclusion of law.

Fifth. He excepts to the refusal to find the second proposed conclusion of law.

Sixth. He excepts to the refusal to find the third proposed conclusion of law.

Seventh. He excepts to the refusal to find the fourth proposed conclusion of law.

152 Eighth. He excepts to the refusal to find the fifth proposed conclusion of law.

Ninth. He excepts to the refusal to find the sixth proposed conclusion of law.

Tenth. He excepts to the refusal to find the seventh proposed conclusion of law.

Eleventh. He excepts to the refusal to find the eighth proposed conclusion of law.

That a final decree was made by the court affirming the decree of the district court dismissing the libel of the libellant herein & for the sum of two hundred & sixty-nine $\frac{1}{100}$ dollars, costs of said suit.

And inasmuch as the said exceptions do not appear by the record of the decree of said court, the counsel for said libellant has prepared & caused this bill of exceptions to be settled as a record thereof according to the form of the statute in such case made and provided and the practice of the court, and to be signed & filed.

M. R. WAITE.

153 (Endorsed:) U. S. circuit court. John H. Starin vs. Sch'r Jesse Williamson, &c. Bill of exceptions. Benedict, Taft & Benedict, lib'l't's proct's, 64 Wall street, New York. U. S. circuit court. Filed Mar. 23, 1880. John I. Davenport, clerk.

154 At a stated term of the circuit court of the United States for the southern district of New York, in the second circuit, held at the court-rooms in the U. S. post-office building, in the city of New York, on the third day of September, 1879.

Present, Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States.

JOHN H. STARIN, LIB'L'T & APP'L'NT,
against
THE SCHOONER JESSE WILLIAMSON, JR., WILLIAM H. SISE et al., cl'm'nts & appellees.

The appeal of John H. Starin from the decree of the district court of the United States for the southern district of New York, made and
155 entered in said district court on July 19th, 1877, having been heard upon the apostles and further proofs taken in the circuit court and due deliberation had, on motion of Scudder & Carter, proctors for the claimants:

It is ordered that the said decree of the district court of the United States for the southern district of New York be, and the same is hereby, in all things affirmed, and that the libel herein be dismissed, and that the claimants, William H. Sise, Icabod Goodwin, Daniel Marcy, George Anable, G. F. Melcher, C. A. Hazlett, John R. Holbrook, George T. Vaughn, Charles H. Chase, John W. Moses, William R. Preston, George W. Pendexter, William Downs & Son, A. A. Payne, B. F. Webster, Mathew B. Vennard, and Horace M. Seawards, recover of the libellant the
156 costs of said district court as taxed by said court at the sum of one hundred and ninety dollars and fifty-seven cents, and also recover of said libellant the costs of the circuit court taxed at the sum of seventy-eight & $\frac{50}{100}$ dollars. And it is further ordered that John H. Starin and James D. Spraker, the principal and surety on the libellant's stipulation for costs, cause the engagements of their stipulation to be performed, or show cause within four days after the service of a copy of this decree on the proctors for libellant, or on the first day of jurisdiction thereafter, why execution for the sum of $250, the amount of said stipulation, should not issue against their goods, chattels, and lands.

And it is further ordered that the same persons show cause at the
157 same time why a summary judgment should not be entered against them for the sum of six hundred and fifty dollars, the amount of the libellant's bond on appeal executed by them, and unless an appeal be taken and security given on such appeal to stay execution within ten days after service of a copy of this decree, that execution issue to enforce the same.

M. R. WAITE.

Approved as to form.

BENEDICT, TAFT & BENEDICT,
Lib'l't's Proctors.

(Endorsed:) U. S. circuit court. John H. Starin ag'st the Jesse Williamson, jr., &c. Decree. Scudder & Carter, lib'l't's proctors, 66 Wall st. U. S. circuit court. Filed Sept. 5th, 1879. John I. Davenport, clerk.

158 Circuit court of the United States for the southern district of New York.

JOHN H. STARIN, LIBELLANT & APPELLANT,
against
THE SCHOONER JESSE WILLIAMSON, JR., HER tackle, &c., William H. Sise, Ichabod Goodwin, Daniel Marcy, George Annable, G. F. Melcher, C. A. Hazlett, John R. Holbrook, George F. Vaughan, Charles H. Chase, John W. Moses, William R. Preston, George W. Pendexter, William Downs & Son, A. A. Payne, B. F. Webster, Matthew B. Vennard, and Horace M. Seaward, claimants & appellees.

To the honorable the Supreme Court of the United States:

The appeal of John H. Starin, the above-named libellant and
159 appellant, respectfully showeth:

That on or about the fifth day of November, 1875, he filed his libel in the district court of the United States for the southern district of New York, against the schooner Jesse Williamson, jr., her tackle, &c., in a cause civil and maritime for the recovery of damages alleged to have been sustained by him to the barge James A. Burden by collision with the schooner Jesse Williamson, jr., and that the said schooner was duly arrested upon process issued upon said libel, and was discharged on the claimants and appellees appearing and filing claim and stipulation.

That thereafter the said claimants and appellees duly filed their answer to said libel, and such proceedings were had in said cause that on or
160 about the nineteenth day of July, 1877, a final decree was made and pronounced in said cause by said district court, wherein it was adjudged that the libel of the libellant & appellant be dismissed with costs.

That thereafter this appellant duly appealed from said decree to the circuit court of the United States for the southern district of New York, and the said cause was removed thereby into the said circuit court, and there tried anew and such proceedings were had in the said circuit court that afterwards, and on or about the third day of September, 1879, the said circuit court made a final decree in the said cause, whereby it was decreed that the said decree of the district court be in all things affirmed
161 with costs and that the said libel be dismissed, which said decree of the said circuit court is, as this appellant is advised, erroneous, and ought to be reversed, and a decree made decreeing that the libellant is entitled to recover the damages sustained by him by reason of the matters and things in the libel mentioned.

Wherefore this appellant appeals from the whole of said decree of said circuit court to the Supreme Court of the United States, and respectfully prays that the decree of the said circuit court, and the libel and answer, depositions, evidence, proceedings, findings proposed, requests to find, exceptions to findings, and refuses to find, if any, and all other papers in said cause may be sent to the Supreme Court of the United States with-
162 out delay, and that the said Supreme Court will proceed to hear said cause anew, and that the said decree of the circuit court, and

every part thereof may be reversed, and a decree made decreeing that the libellant and appellant recover the damages by him sustained, with interest and costs, or such other decree made as to the said Supreme Court may seem just.

BENEDICT, TAFT & BENEDICT,
Libellant & Appellant's Proctors.

E. C. BENEDICT, *Advocate.*

(Endorsed:) U. S. circuit court. John H. Starin against the Schooner Jesse Williamson, jr., &c., &c. Appeal. Benedict, Taft & Benedict, lib'l't & app'l'nt's proctors, 64 Wall st., New York. U. S. circuit court. Filed Sept. 27, 1879. John I. Davenport, clerk.

163 *Bond for costs.*

Circuit court of the United States of America for the southern district of New York, in the second circuit.

JOHN H. STARIN
vs.
THE SCHOONER JESSE WILLIAMSON, JR., HER tackle, &c., William H. Sise & others.

Know all men by these presents that we, John H. Starin and James D. Spraker, of the city of New York, and Anning Smith, of Jersey City, in the State of New Jersey, are held and firmly bound unto the above-named William H. Sise & others in the sum of four hundred dollars, to be paid to the said Sise & others, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the first day of October, in the year of our Lord one thousand eight hundred and seventy-nine.

Whereas the above-named John H. Starin has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by Chief-Justice Waite, holding a circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named John H. Starin shall prosecute his appeal to effect, and answer all damages and costs if he shall fail to make his appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JNO. H. STARIN. [L. S.]
JAS. D. SPRAKER. [L. S.]
ANNING SMITH. [L. S.]

Sealed and delivered and taken and acknowledged this first day of Oct., 1879.

[L. S.] W. D. JONES,
Notary Public for Kings Co.

(Cert. filed in N. Y. Co.)

164 UNITED STATES OF AMERICA,
Southern District of New York, ss:

James D. Spraker and Anning Smith, being duly and severally sworn,

each for himself deposes and says that he resides, said Spraker, city of New York, & said Smith in Jersey City, & that he is worth the sum of eight hundred dollars, over and above all his just debts and liabilities.

JAS. D. SPRAKER.
ANNING SMITH.

Sworn to this first day of Oct., A. D. 1879, before me—
[L. S.]
WM. D. JONES,
Notary Public for Kings Co.

(Cert. filed in N. Y. Co.)
Approved.

SCUDDER & CARTER,
Proc. f'r Clnts.

Approved.

SAM'L BLATCHFORD,
Circuit Judge.

OCT. 3, 1879.

(Indorsed:) U. S. circuit court. John H. Starin vs. Sch'r Jesse Williamson, jr., &c. Bond for costs on appeal. Benedict, Taft & Benedict, li'l't's proctors. U. S. circuit court. Filed Oct. 3, 1879. John I. Davenport, clerk.

165 By the honorable Samuel Blatchford, judge of the circuit court of the United States for the southern district of New York, in the second circuit.

To William H. Sise, Ichabod Goodwin, Daniel Marcy, George Annable, G. F. Melcher, C. A. Hazlett, John R. Holbrook, George F. Vaughan, Charles H. Chase, John W. Moses, William R. Preston, George W. Pendexter, William Downs & Sons, A. A. Payne, B. F. Webster, Mathew B. Vennard, and Horace M. Seawards.

Whereas John H. Starin has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York, in the second circuit, made in favor of you, William H. Sise and others, in a certain suit
166 brought by said John H. Starin against the schooner Jesse Williamson, jr., and said John H. Starin has filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court at the city of Washington, on the second Monday of October next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district of New York, in the second circuit, the 3d day of October, in the year one thousand eight hundred and seventy-nine, and of the Independence of the United States the one hundred and third.

SAM'L BLATCHFORD.

BENEDICT, TAFT & BENEDICT,
Appellant's Proctors, 64 Wall St., N. Y.

167 (Endorsed:) U. S. circuit court. John H. Starin ag'st The

Schooner Jesse Williamson, jr., &c., &c. Citation. Benedict, Taft & Benedict, appellant's proctors. 64 Wall street, New York.

Due & and sufficient service of the within citation is hereby admitted. Oct. 10, '79.

SCUDDER & CARTER,
Proc. for Cl'm'ts.

U. S. circuit court. Filed Oct. 11, 1879. John I. Davenport, clerk.

168 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John I. Davenport, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to one hundred & sixty-seven, inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of John H. Starin, libellant & appellant, against the schooner Jesse Williamson, jr., her tackle, &c., William H. Sise, Ichabod Goodwin, Daniel Marcy, George Annable, G. F. Melcher, C. A. Hazlett, John R. Holbrook, George F. Vaughan, Charles H. Chase, John W. Moses, William R. Preston, George W. Pendexter, William Downs & Son, A. A. Payne, B. F. Webster, Mathew B. Vennard, and Horace M. Seaward, claimants & appellee, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New Yok, in the second circuit, this 15th day of April, in the year of our Lord one thousand eight hundred and eighty, and of the Independence of the said United States the one hundred and fourth.

[SEAL.] JOHN I. DAVENPORT, *Clerk.*

(Indorsement on cover:) No. 212. John H. Starin, appellant, vs. The Schooner Jesse Williamson, jr., her tackle, &c., William H. Sise & al. S. New York C. C. U. S. Filed 21st April, 1880.

(Stamp:) Office Supreme Court U. S. Filed Apr. 21, 1880. D. W. Middleton, clerk.

SUPREME COURT U.S.
FILED
NOV 29 1890
JAMES H. McKENNEY, Clerk

106-305

U. S. Supreme Court.

JOHN H. STARIN,
Liblt. & Applt.
vs.
THE SCHOONER "JESSE WILLIAMSON, JR.," &C.

Points for Appellant on Motion to Dismiss.

The libel in this case was filed by the owner of the barge "James A. Burden," to recover for the total loss of the barge and her cargo in a collision with the schooner "Jesse Williamson, Jr." The value of the barge and her cargo was alleged in the libel to be $27,000. The District Court dismissed the libel, and that decree was affirmed by the Circuit Court. This appeal is taken by the libellant from that decree of the Circuit Court.

The claimants of the schooner move to dismiss the appeal, claiming that this Court has no jurisdiction to entertain it, because, as they say, the schooner having been bonded in the sum of $2,100, the "matter in dispute" is the amount of the stipulation for the value of the schooner and not the amount of the damages which the libellant sustained, and which he sought to recover.

On behalf of the appellant we insist that the "matter in dispute" is the amount of the damages which the libellant claims in his libel, which is $27,000, and not the amount which he may be able to collect, on a decree in his favor; and in opposition to the motion to dismiss, we submit the following points:

FIRST.

No authority in favor of the motion to dismiss is referred to in the respondent's brief. It is treated as a new question and argued on reasoning, instead of authority. But it is not a new question. There is positive authority against the motion. And, moreover, the argument adduced by the respondent's brief is fallacious, and sound reasoning leads to the opposite conclusion.

SECOND.

The case of "The Enterprise" (2 Curtis, 317), is a strong and sufficient authority against the motion.

In that case a libel was filed for wages, and a decree rendered in the District Court for more than $50. The vessel was sold, and after paying the Marshal's fees, there remained only $13.10, which was paid into Court. The claimant of the vessel insisted on his right to an appeal to the Circuit Court, which was resisted by the libellant, on the ground that the "matter in dispute" was the proceeds of the vessel and did not equal $50.

But the Circuit Court (Curtis, *J.*), held otherwise and allowed the appeal, saying, "what is in dispute in

this case is not the vessel or even the existence of a lien thereon as a security for any wages which may be due; but it is whether any wages are due, and, if any, what is their amount."

So in this case the "matter in dispute" is not the vessel, nor her proceeds, nor the stipulation which "takes the place of the vessel," nor the existence of a lien on the vessel for the damages claimed; but it is whether any damages are due, and, if any, what is their amount?

THIRD.

While we have found no authority in this Court, which is as directly in point as the case of "The Enterprise," yet authorities which adopt the principle and cover the case are not wanting in the decisions of this Court.

> "When the plaintiff sues for an amount exceeding $2,000, and the *ad damnum* exceeds $2,000, if by reason of any erroneous ruling of the Court below the plaintiff recovers nothing or less than $2,000, then *the sum claimed by the plaintiff* is the sum in controversy for which a writ of error will lie." Story, *J.* (Knapp *vs.* Banks, 2 How. 73)

The question of the amount or value of the security which the party plaintiff has for his claim has never been considered by the Court. In the case of Ross *vs.* Prentiss, (3 How., 771), an effort was made by an ap-

pellant, in order to sustain an appeal, to have the Court consider the value of land on which an execution had been levied as being the matter in dispute. But the Court refused to do so, holding that the matter in dispute was the amount of the execution, against which the appellant sought relief, saying, "the only matter in controversy is the amount claimed on the execution. The dispute is whether the property in question is liable to be charged with it or not." So here the matter in controversy is the libellant's claim for damages. Whether the vessel is of value enough to pay the claim does not affect the dispute.

In the case of Wilson *vs.* Daniel, (3 Dallas, 401)—Chase, *J.*—while saying that the demand of the plaintiff ought not to be made the sole criterion, says: "It must be acknowledged, however, that in actions of tort or trespass, from the nature of the suits, the damages laid in the declaration afford the only practicable test of the value of the controversy." This rule is subject to this exception, that if the amount of the damages in such a case has been fixed by a judgment, the amount of the judgment is the "matter in dispute," as far at least as concerns an appeal *by the defendant*. In this case of Wilson *vs.* Daniel, above cited, the existence of this exception to the rule was denied, and attention called by *Ch. J.* Ellsworth to the inequality between the parties which the exception would create. But later cases have established the existence of the exception. (Gordon *vs.* Ogden, 3 Pet., 34.)

That exception, however, does not exist in this case, which comes squarely within the general rule that the *damages laid* are the "matter in dispute" in cases of tort or trespass.

It may be suggested that these authorities refer to cases at law. But the same language is used and applied to appeals in admiralty in the case of "The Falcon." (17 How., 22.)

"The defendant can appeal, where the judgment or decree against him exceeds the sum of $2,000; but an appeal may be taken by the plaintiff when his *claim of damages in the declaration or libel exceeds the above sum*, or where the value of the thing claimed exceeds it, as this is held to be the matter in dispute."

If this libel had been filed to recover the schooner herself, claiming her value to be over $5,000, and it appeared that she had been bonded in $2,100, the matter in dispute might be held to be the actual value of the vessel and not the alleged value; and the Court might look to the stipulation for value in determining that amount, just as in common law actions of replevin, it will allow affidavits to be read, outside of the record, on the subject of the value of the property sought to be replevined. (Richmond *vs.* "The City of Milwaukee," 21 How., 392.)

But this is not an action to recover the possession of the schooner, but the damages sustained by the libellant; and it is exactly covered by the language of this Court in the case of "The Falcon," above cited, that "an appeal may be taken by the plaintiff, *where his claim of damages in the declaration or libel* exceeds the sum" which is necessary to the appellate jurisdiction.

FOURTH.

The position taken by the brief of counsel in support of the motion, is that the "matter in dispute is the alleged lien of the libellants upon the vessel of the claimants."

> The case of "The Enterprise" above cited is an exact authority to the contrary. Judge Curtis in that case says, "the matter in dispute is not the existence of a lien" on the vessel.

FIFTH.

The argument is adduced that "if the libellants had recovered a decree for the full amount of their damages, the claimants could only be called on to pay the $2,100, the value of their vessel, and they could not appeal." But that this is an error is shown by the case of "The Enterprise" (*supra*). The claimants could appeal, because the decree in the suit *in rem* fixes the right between the parties.

And in the Admiralty, "in a suit *in rem*, it is not usual to render a decree *in personam*, but if the case proved shows a clear right to recover *in personam*, the libellant may be permitted, after a decree *in rem*, to introduce the proper allegations *in personam*, and proceed upon them to a further decree against the person." (Benedict's Adm., 2 ed., §548. See Betts Pr., p. 99.)

The error of the brief for appellees is in confounding the liability of the stipulators with the matter in dispute between the principal parties. The liability of the stipulators arises out of their stipulation, and, of

course, cannot be greater than the amount of the stipulation. But that has nothing to do with the liability of the claimants for the damages sustained by the libellant. This arises out of the collision. And it is this which is the "matter in dispute" between the parties entirely irrespective of the amount of security which the libellant may have for the payment of the damages.

SIXTH.

On principle therefore, as well as on authority, we say, that the matter in dispute in this action far exceeds the amount necessary for an appeal to this Court, and that the motion to dismiss the appeal should therefore be denied.

R. D. BENEDICT,
Appellant's Counsel.

108-305

BURGOYNE (Telephone No. 590), 29 Ross St.

Supreme Court of the United States.

John H. Starin,
Libellant and Appellant,

vs.

The Sch. Jesse Williamson, Jr.,
and Wm. H. Rise and others,
Claimants and Appellees.

Appellees' Points on Motion to Dismiss.

The libel filed was against the schooner and her freight, and alleged that by the collision the libellant suffered damages in the sum of $27,000.

See fourth and fifth articles of libel.

Upon this libel process was issued against both *schooner* and *freight*, and to reach the latter, the process directed the Marshal to attach the cargo. On Nov. 16th, 1875, the District Court, by order, set aside the process against the cargo, and on Nov. 30th, 1875, by another order, by consent set aside the process against the freight.

The schooner was attached, and while in custody appraisers were appointed by the Court, and on Nov. 20, 1875, the report of the appraisers, fixing the value at twenty-one hundred dollars, was made, and on Nov. 24 a stipulation for the appraised value was given in the sum of $2,100, and the schooner was discharged.

The libel was dismissed by the District Court, and on appeal the Circuit Court also dismissed it.

POINTS.

This motion is based upon the language of § 692 of the U. S. R. S., as amended by ch. 77 of the Laws of 1874, § 3, which is as follows:

Sec. 3. That whenever, by the laws now in force, it is required that the matter in dispute shall exceed the sum or value of two thousand dollars, exclusive of costs, in order that the judgments and decrees of the Circuit Courts of the United States may be re-examined in the Supreme Court, such judgments and decrees, hereafter rendered, shall not be re-examined in the Supreme Court, unless the matter in dispute shall exceed the sum or value of five thousand dollars, exclusive of costs.

The *matter in dispute* is the alleged *lien* of the libellant upon the vessel of the claimants. This was created by operations of law if the collison occurred by the fault of those navigating the schooner.

The value of such matter could not exceed the value of the schooner, for the lien could only consume her, and such value was $2,100.

A few elemental propositions demonstrate that it is the question of lien which is the matter in dispute.

The lien is a *jus in re.*

The Kate Tremaine, 5 Ben., 6[illegible].
The Triumph, 2 Blatch., note, p. 434.
The Fredonia, 17 L. T. R., 622.

It follows the property into the hands of a purchaser for value, and may be enforced against the property after successive sales, provided no *laches* intervene.

The Avon, 1 Brown Ad. R., 170, and cases cited.

If the claimant be a purchaser after the collision, no question of personal liability, or of the effect of the decision as *res adjudicata*, can arise.

The stipulation takes the place of the vessel, and relieves her from all liability.

The Virginia Ruland, 97 U. S., 317.
The Lady Pike, 96 U. S., 465.

The utmost amount the libellant can recover is the amount of the stipulation for value.

The Wanata, 95 U. S., 614.

In this case it is said:

"None of these authorities, however, conflict "in the least degree with the proposition that "the sureties in an admiralty stipulation can "never be compelled to pay more than the spe- "cific sum expressed in the stipulation for any "default or contumacy of the principal."

The whole "fund," in this case, is the stipulation for value which was carried into the Circuit Court by the appeal to that Court, and it is all that the mandate of this Court can operate upon (The Lady Pike, *supra*).

It will not do to say that the *amount* of the libellant's damage is the matter in dispute. That would be so in the case of a suit *in personam*, but where the sole issue is *lien* or no *lien*, the amount is only of importance where the lien, when established, is of a value exceeding the statutory limit.

For example: If the libellant had recovered and a decree was entered in his favor, and the damages were established at the amount claimed, to wit: $27,000, the claimants could only be called on to pay the $2,100, the value of their vessel, and they could not appeal.

No doubt, if the vessel were worth $27,000, and the libellant's claim were $2,100, he could not appeal, for then the amount of the *lien* would not exhaust the subject, and the extent of the lien would be measured by the damage claimed, but this view only illustrates and enforces the position taken. It amounts to this:

that the existence of a lien for $2,100 on a subject worth much more is the matter in dispute, and the *value* of that matter is the amount claimed, for there is sufficient to meet and satisfy the claim, but where the subject matter of the lien is worth a small amount it does not create a value to the matter to make the claim large.

To further illustrate: When gold was at a premium of 200, $5,000 gold would be an adequate pledge for $8,000 currency.

Suppose such pledge made and a suit brought to enforce it, and by the time decree is entered gold and currency to be at par, it is plain that the value of the gold pledged would not give jurisdiction for an appeal.

If it be claimed that the decree *in rem* will establish a *liability* of the owners in an actian *in personam*, the answer is that no such collateral action has been brought, and if it had it would be available only to the *owners* to set it up, they would be the parties who might invoke the rule—not the libellant.

Troy vs. Evans, 97 U. S., p. 3.

The motion should be granted.

HENRY J. SCUDDER,
Of Counsel for Claimants.

OFFICE SUPREME COURT U.S.
FILED
MAY 14 1883
JAMES H. MCKENNEY, CLERK

UNITED STATES SUPREME COURT.

OCTOBER TERM, 1883.

NO. 212.

108-305

JOHN H. STARIN,

Appellant,

—*vs.*—

The Schooner JESSE WILLIAMSON, her Tackle, &c., WILLIAM H. SISE, et al., Claimants,

Appellees.

BRIEF FOR APPELLEES.

HENRY J. SCUDDER,

Counsel for Appellees.

New-York:
E. WELLS SACKETT & RANKIN, PRINTERS,
56 & 58 WILLIAM STREET.
1883.

United States Supreme Court.

JOHN H. STARIN,
Appellant,

vs.

The Schooner JESSE WILLIAMSON, her tackle, &c., WILLIAM H. SISE, *et al.*, claimants,
Appellees.

October Term, 1883.
No. 212.

BRIEF FOR APPELLEES.

Statement of Facts.

This case comes to this Court by an appeal from a decree directed by the Circuit Court in the Southern District of New York.

The cause of action was a collision that happened on the 2d November, 1875, between the schooner Jesse Williamson, belonging to the appellees, and the barge James A. Burden, in tow of the tug Blanch Paige, both barge and tug owned by the appellants.

The facts found by the Circuit Court necessary for the understanding of the circumstances and cause of the collision, are these:

The collision occurred about half-past seven o'clock in the evening. It was clear but dark at the time.

The schooner had regulation lights properly set and burning; had a crew of captain, mate, three seamen

and cook, and was on a voyage from New Jersey to New Hampshire.

The tug was on her way from New Haven to New York, towing the barge astern by a hawser at least seventy or eighty fathoms long, and the barge itself was from 120 to 130 feet long.

The lights of the tug were a white head light, red light on port, and green on starboard side, and two *white globe lanterns* on the flag staff aft hung one above the other. The lights aft were not of a character to be visible on a dark night with a clear atmosphere at a distance of five miles, and were not otherwise constructed or fixed as mast-head lights.

The barge had two *white globe lanterns* hanging one above the other from her flag staff, *burning dimly*, but no other lights whatever.

Rule IX of the rules and regulations of the supervising inspectors, appointed under the authority of the act of February 28th, 1871 (Rev. Stat., secs. 4405 and 4412), is as follows:

"Steam vessels, when towing other vessels, shall carry two bright white mast-head lights vertically, in addition to their side lights, so as to distinguish them from other steam vessels. Each of these mast-head lights shall be of the same construction and character as the mast-head lights which other steam vessels are required to carry; and in addition to the lights herein referred to, when engaged in towing canal boats and barges, or both, as is customary on the Hudson and other rivers, white lights shall also be carried on the extreme outside of the tow on either hand, and also on the extreme after part of the same."

This rule was approved by the Secretary of the Treasury.

The schooner had on deck, prior to and at time of collision, her captain, mate, and three seamen.

The captain was aft, a seaman at the wheel, and the mate forward on look-out.

The mate on the look-out saw and reported the green light of the tug, then the white head light, then the red light the green light shut out. *No other lights were seen.*

The red light of the schooner was alone seen from the tug, and this at a mile or something less of distance. No lights were seen on the barge. The captain went forward on lookout after mate had reported lights he saw on tug, and after passing tug, saw barge looming up out of darkness and angling across schooner's bow, and this was first time barge or anything on her had been seen from schooner. He saw no lights on barge. Schooner's wheel ported at once, but collision then inevitable.

The Court found that "from the evidence it appears to have been the practice of tug-boats, engaged in towing on the waters of New York, East River and Long Island Sound at the time of and before this collision, to carry their vertical lights on the flag-staff aft; a single white light was carried forward, red and green at sides."

The findings of the Circuit Court are at pp. 60 and 61 of Record. The conclusions of law at p. 62. The District Court found the tug and barge in fault, for not complying with the statute requiring a steam vessel towing to carry two bright white mast-head lights vertically, and the Court held that the *two globe lanterns* aft were not proper towing lights. The opinion of the learned Judge of that Court is at pp. 35–40 of Record.

Upon appeal and additional testimony, the Circuit Court affirmed the decree below, and also held the tug and barge in fault for not carrying the proper lights required by the statute. The opinion of the learned Chief Justice who presided at the Circuit is found at pp. 62–64 (to fol. 143 of latter) of Record.

Appellant's exceptions are at p. 66 of Record.

The schooner was appraised under the rules, and valued, with her tackle, &c., and *pro rata* freight, at $2,100 (p. 6).

After the appeal to this Court, a motion was made here to dismiss the appeal, upon the ground that the subject matter involved could not exceed the appraised value, and the Court directed that motion to be heard with the appeal.

POINTS.

I.—The tug and barge are to be treated as one vessel and that a steam vessel.

They are separable only in respect to the lights they are required to carry, but not as to the responsibility imposed by law upon a steamer. That responsibility applies to each, as if both were one.

The Cleadon, 14 Morris P. C. C., 92.
The Civilta, 6 Ben., 309, 319.
The U. S. Grant, 7 Ben., 195, 205.

II.—It was the clear duty of the steamer to avoid the schooner, and the burden is upon her to establish fault in the schooner, but she fails to meet this burden.

The finding upon the navigation of the schooner is very explicit, "*The schooner passed the tug port to port, at a safe distance, and steadily kept her course*" (fol. 129).

As a sailing vessel she obeyed the rule, charging her not to alter her course. The fact, that a barge without lights, or with lights, so dim as to be invisible, one hundred feet away, is swinging five hundred feet astern of her towing tug, imposes no obligation upon the sailing vessel to change her coure. The barge is the tug for the purposes of navigation, and should be near enough to the tug, or in such juxtaposition to her to

enable the sailing vessel to guide her course in like manner, as if the two were one, and if the tug and barge so arranged themselves, that the sailing vessel was misled while in the strict performance of her duty, the fault of the disaster rests entirely with the tug and barge.

III.—The schooner was justified in holding her course after seeing and passing the tug; even had she made the barge while passing, for it was her place to permit the steamers to control the navigation, and an alteration in her course would have been an interference with the steamer's prerogative.

The change of course, after the barge loomed into view, was *in extremis*, and lightened the blow, as that change tended to take the schooner away from the barge. This constituted nothing and was done when collision was unavoidable. (10th Finding of Fact, fol. 129.)

IV.—The schooner having thus complied with the sailing rules, governing the movements of a sailing vessel or steamer meeting, would seem absolutely free from fault, but the appellants urge a proposition that is certainly novel, and if affirmed would inevitably eventuate in the destruction of all rules, and the substitution of *local and casual practices* in their place.

Rule 4 of Statutory Navigation Rules, Rev. Stat. Sec. 4233 provides that "steam vessels when towing other vessels shall carry ~~the~~ two *bright, white mast-head lights vertically*, in addition to their side lights, *so as to distinguish them from other steam vessels*, and that each of these mast-head lights shall be of the *same*

character and construction as the mast-head lights prescribed by Rule 3.

Rule 3 requires "at the *foremost head* a bright white light of such a character as to be visible on a dark night with a clear atmosphere at a distance *of at least five miles*, and so constructed as to show a uniform and unbroken light over an arc of the horizon of twenty points of the compass, and so fixed as to throw the light ten points on each side of the vessel.

Upon the facts found these rules were not complied with by the steamer. The 5th finding is (fol. 127) "two white *globe lanterns on the flag staff aft*, hung one above the other. The lights aft were *not of a character to be visible on a dark night with a clear atmosphere at a distance of five miles, and were not otherwise constructed or fixed as mast-head lights.*"

The appellants to escape the effect of this violation of the statute, contend that it is the *practice* in New York waters for tug boats to carry the globe lanterns on a flag-staff aft, and that this practice is sanctioned by the rules of the Supervising Inspectors. Rule 9 of the Inspectors repeats the language of Rule 4 of the Statute quoted above *verbatim*, and thus avoids any question in respect to the character or construction of the lights to be used by towing tugs.

It can hardly be claimed that the powers conferred upon the inspecting supervisors were purposed to extend to the length of repealing or amending the statutory rules. The object was provisional and to meet particular exigencies not covered in detail by the general law.

Nor can it be gravely contended that a *local practice* shall sweep away any law, and much less such wholesome law as that providing for the navigation of vessels. What vessel from Maine would be secure in New York, or what vessel from Boston safe in the Delaware, if the

careless habits of sailors in each port were suffered to substitute the express statutory requirements?

Sunnyside, 91 U. S., 209.

V.—The decree below should be affirmed with costs.

HENRY J. SCUDDER,
Of Counsel for Appellees.

OFFICE SUPREME COURT U.S.
FILED
APR 9 1883
JAMES H. McKENNEY, Clerk.

108-305

Supreme Court of the United States.

JOHN H. STARIN,
Libellant and Appellant,

vs.

THE SCHOONER JESSE WILLIAMSON, JR., &c.

No. 212.

Brief and Points for Appellant.

This is an appeal from a decree of the Circuit Court of the United States for the Southern District of New York, affirming a decree of the District Court of that District, which dismissed the libel in the cause.

Statement of the Case.

This libel was filed by the owner of the barge James A. Burden, to recover $27,000 for the total loss of the barge and her cargo by reason of a collision between her and the schooner Jesse Williamson, Jr., which occurred on the night of Nov. 2, 1875, in the East River, about a mile or so west of Throgg's Point. The barge was in tow of the steam tug Blanche Paige, also owned by the libellant, and was being towed astern of her on a hawser of seventy or eighty fathoms in length. The night was clear but dark, and the wind was heavy from the northward and westward, and the tug was towing the barge at a speed of five or six miles an hour.

The channel at Throgg's Point, (on which is Fort Schuyler) makes a sharp turn of almost a right angle from S. W. by S. to W. N. W., so that, of course, it is impossible to see around the point. Those on the schooner, which was bound east, saw the head light and green side light of the tug, bound west, as she rounded the buoy at the point, the schooner being then about two miles west of the point. They did not, at any time, see either the towing lights of the tug or the lights on the barge astern. They saw that the tug made the turn at the buoy by her shutting out her green light and showing the red light.

They headed on a course so as to pass the buoy as close as they could, and kept on that course till the schooner had passed the tug, when, for the first time the captain of the schooner saw the barge ahead of him. He then ported his wheel, but it was too late. The schooner struck the barge on her port side, and her bowsprit knocked down a stove in the cabin which set the barge on fire and destroyed her.

The tug had rounded the buoy which is on the north side of the channel and thereafter made a point or a point and a half further north than the channel course which is W. N. W. She saw the red light of the schooner as she rounded the buoy, the vessels then not being more than a mile apart. She made no other change of course.

The District Court dismissed the libel on the ground that the tug did not have two white mast-head lights vertically *at her stem*.

The Circuit Court affirmed the decree, but has not specifically affirmed it on that ground. The Circuit Court held that the two lights, which the tug did have on her flag-staff aft, were "not of a character to be visible on a dark night with a clear atmosphere at the distance of five miles, and were not otherwise constructed or fixed as mast-head lights" (finding 5) and it held as matter of law that the tug was in fault "for not carrying two bright white mast-head

lights vertically as required by Rev. Stat. §4,233, Rule 4,"—and that the schooner was not in fault.

In the opinion of the Court it is said that it was not necessary to decide the question whether lights at the stern would be such lights as required by Statute. And the decision was placed on the character of the lights which the tug carried and not their position on the flag-staff at the stern of the tug.

Assignment of Errors.

First.—The Circuit Court erred in holding that the tug was so in fault as averred in the first conclusion of law.

Second.—The Circuit Court erred in holding that the schooner was not in fault, as stated in the second conclusion of law.

First Point.

The question of law, which is involved in this case as to the proper lights to be carried upon steam tugs, is a very important one.

On the point decided by the District Court, viz., that a steam-tug is required by the statutes and rules, when towing other vessels, to carry "two lights at her head and to carry them vertically, and to dispense with the after light" of the central range of lights (Record, p. 38, fol. 78), the District Courts of the Eastern and Southern Districts are at variance. (The City of Troy, 9 Ben., 466; The Rhode Island, 8 Ben., 42), and as will be seen by the 2d of the further facts found (Rec., p. 65, fol. 149), the usage in the waters of New York is contrary to the decision of the District

Court in this case. "There was not a case proved in which the vertical lights were carried at the bow."

If all the tug-boats which ply in and out of the port of New York are carrying lights which are not in conformity to law, it is of the highest importance that they should know it and know it at once.

Second Point.

The decision of the Circuit Court rests on the proposition that the 4th Rule of Section 4233 of the Revised Statutes furnishes the law by which the lights on this steam-tug should have been regulated.

And apparently it holds that this tug was not in fault for not obeying that law, inasmuch as she did not have lights, of the character and construction required by Rule III, and fixed as required by that rule.

But we venture to submit to this Court that this is an error; and that by reason of *other provisions of law* the lights, which this tug and those like her are required to carry when towing, are no longer subject to Rule IV of Section 4,233 of the Revised Statutes.

(*a.*) In order to consider this question rightly, we must look first at the history of the various enactments on the subject.

The rules for preventing collisions, of which Rule IV was one, were first adopted in 1864.

Rules III and IV were a part of those rules in their present form. Rule III provided lights for "all ocean-going steamers and steamers carrying sail," the first of which was the masthead light of the

character and construction in question, and so fixed, etc., etc.

Rule IV provided that "steam-vessels, when towing other vessels shall carry two bright white masthead lights vertically," and added that each of these should be "of the same character and construction as the masthead lights prescribed by Rule III."

This rule, as will be seen, by omitting the qualifying words of Rule III, was made applicable to all steam vessels, whether ocean going or carrying sail or not.

But Rule III was found to have great practical inconvenience, in that it conflicted with what was the universal usage of steamers navigating our inland waters to carry no masts, and to carry a central range of two lights, a low light at the bow and a high light at the stern.

And so in 1871 Congress amended the rules by putting into them what is now Rule VII, of §4233 of the Revised Statutes, which substitutes a different system of lights for "coasting steam vessels, and steam vessels other than ferryboats and vessels otherwise expressly provided for, navigating the bays, lakes, rivers, or other inland waters of the United States."

This was done by the 47th section of the Act of Feb. 28, 1871 (16 U. S. Stats. at Large, p. 454), and the following clause was added: "That the provision for a foremast head-light for steamships" in the Act of 1864, "*shall* not be construed to apply to other than ocean-going steamers and steamers carrying sail."

Steam vessels on inland waters therefore are no longer required to carry the masthead lights of the character or construction, or fixed as required by Rule III of §4233.

But, by an oversight, the change in Rule IV, which ought to have been made, in order to provide the appropriate lights for vessels of this latter class when engaged in towing, was not made—and unless the effect of the above provision of the Act of 1871

has been to take this class of vessels out of Rule IV, or unless that change has been wrought by some other provision. Rule IV is applicable to them all still, and these steam tugs which have no masts at all, are still required when towing to carry two masthead lights at the foremast head, and the central range of lights besides. If that is so, the decision of the District Court on this point was right, and there is not and never has been a tug navigated out of the port of New York in conformity with law.

(*b.*) But, it is not, as we think, necessary to arrive at this result, by reason of those provisions of the Statutes which provide for the making of Rules by the Board of Supervising Inspectors of Steamboats, (Rev. Stat. §§4405, 4412), which, "when approved by the Secretary of the Treasury shall have the force of law."

In pursuance of this power given to the Supervising Inspectors they made two Rules. One was for the purpose of conforming the lights on "steamboats navigating seas, gulfs, lakes, bays, sounds or rivers," when not engaged in towing, to the provision of the Act of 1871, now Rule VII, of §4233 of the Revised Statutes. It provides that "all steamers rigged for carrying sail, when under way, must carry a bright white light at the foremast head, and all other steamers must carry a bright white light on the stem, or near the bow, and another *on a mast near the stern, or on the flag-staff at the stern*, the last-named being at an elevation of at least twenty feet above all other lights upon the steamer."

And they further passed Rule IX, apparently for the express purpose of remedying the oversight in the passage of the Act of 1871. That Rule IX provides that "steam vessels when towing other vessels shall carry two bright white mast-head lights vertically, in addition to their side lights, so as to distinguish them from other steam vessels. Each of

these masthead lights shall be of *the same construction and character as the masthead light, which other steam vessels are required to carry.*"

This Rule IX was approved by the Secretary of the Treasury, and has, therefore, the force of law.

It seems to us that the effect of this Rule, as far as steam vessels navigating the inland waters of the United States, as distinguished from "ocean-going steamers, and steamers carrying sail," are concerned, is to modify the requirement of Rule IV. of § 4,233, so as to provide that the masthead lights to be carried vertically, instead of being, on such vessels, required to be "of the same character and construction as the masthead lights prescribed by Rule III," are to be "of the same construction and character as the masthead lights which other steam vessels are required to carry."

Now, the only masthead light, which this class of steam vessels are required to carry, is the high light of the central range, which by the statute is to be "at least fifteen feet above the light at the end of the vessel," and by Inspector's Rule VII, is to be carried "on a *mast near the stern*, or on the flag-staff at the stern."

The provisions in relation to character and construction which are found in Rule III, of § 4233, are nowhere made applicable to these central range lights on this class of vessels, and the provision of Rule III as to the foremast light was by the Act of 1871 expressly confined to ocean steamers and steamers carrying sail.

And, therefore, as it seems to us, those provisions are no longer applicable to the two vertical lights to be used on this class of vessels when towing.

(*c.*) The Circuit Court held that it was not necessary to enquire whether Rule IX "has the force of law as a rule of navigation," because a tug in inland waters must exhibit two vertical lights "of equal power with the masthead lights of sea-going steam-

ers, so fixed as to present a uniform and unbroken light right ahead and ten points on each side."

But, as we have seen, if Rule IX has such force, tugs on inland waters are not required to exhibit lights of such power; and in any event, there is no provision of law which requires them to be "so fixed, &c."

If this view of the effect of the Supervising Inspector's Rule IX is correct, it follows that the Circuit Court erred in holding that the tug was in fault for not complying with the provisions of Rule IV of §4,233 of the Revised Statute; and it equally follows that the District Court was in error in holding that the tug was in fault, for not having the two lights, which she had, at the stem, instead of on the flag-staff at her stern.

Third Point.

It will be claimed that the finding of fact that the lights which the tug carried on her flag-staff aft, "were not of a character to be visible on a dark night, with a clear atmosphere, at a distance of *five miles*," is decisive of this case.

But we submit that in view of the position of these vessels and their distance from each other, that is by no means decisive of it.

The answer avers that when the schooner was "about two miles to the westward of Throgg's Neck, and sailing on an easterly course in about the middle of the channel" (Record p. 8, fol 24), the green and white lights of the tug were seen "about a point over the schooner's port bow"; that the lights changed so as to shut out the green and show the red and approached so as to be about half way between the schooner and the shore on her port side.

And this is the finding of the Court, with the additional finding that when the tug passed the buoy at Throgg's "the vessels could not have been more than a mile apart, if so much as that" (9th Finding).

Now, inasmuch as the channel makes a sharp turn of almost a right angle at Throgg's (7th Finding), it is manifest that the lights of the tug could not have been seen any further off than they were, no matter what was their brightness. And, unless it shall be held that the finding that a light would not show *five* miles, is equivalent to a finding that the light could not be seen *two* miles or *one* mile, it is manifest that the lights which the tug carried were plainly in view to those on the schooner from the time the tug turned the point. And the lights being plainly in view, those on the schooner are inexcusable for not having seen them, unless on the ground of the law as laid down by the District Court.

If the District Court was right in its view of the law, then the captain or lookout of the schooner, on seeing the lights of an approaching steam vessel, was only bound to look at the head lights to see whether she was towing another vessel or not. And, as it is proved that he saw the head light (8th Finding), it is proved thereby that he looked at it and thus complied with his duty, and was not in fault for acting, on seeing the single head light, as if the tug had nothing in tow.

But, on the contrary, if the two lights on the flagstaff complied with the requirement of the law, then he was bound to have looked not at the head light, but at the flagstaff light, to see whether the approaching vessel had any vessel in tow.

Now, it is proved that he did not look at the flagstaff light, by the finding that *he saw no other light than the headlight and the side lights* (8th Finding), for if he had looked, how could he have failed to see *at some time before the collision* the lights on the flag-staff, of which the only finding is that they could not be seen *five* miles?

And, if he failed to look at the spot where, *by the usage of navigators in those waters*, he would expect to find the information whether the steam vessel had a tow or not, and consequently did not obtain information which was therefore given, how can the Court fail to find him in fault for such failure, unless he can say that though he failed to look there, he did look at the place where *the statute* required the information to be set forth for him?

And if the statute and the usage concur, then no excuse is left for him.

Fourth Point.

We claim that the requirements of Rule IV have no application to the lights on this tug.

But if it shall be held that that rule is applicable, the following suggestions are pertinent:

Rule III, in relation to masthead lights, covers three particulars.

1st, character; 2d, construction; and 3d, fixing.

The first two relate to the light itself. The last relates to the mode in which the light is placed.

Rule IV, in relation to towing lights, requires only that they shall be of the same character and construction. It does not require that they shall be "fixed," as masthead lights, on vessels that are not towing, are required to be.

Now, the finding in relation to the lights of this tug is a finding no doubt that they were not of the *character* required by Rule III. But when we come to the other particulars we find that it reads that they "were not *otherwise* constructed or fixed as masthead lights." (Finding 5.)

We have seen already that no "fixing" is required by the statute.

There remains the question of "construction" of the light itself.

The construction of the light required by Rule III. is such that the light will "show a uniform and unbroken light over an arc of the horizon of twenty points of the compass."

And the finding as to these lights is that they were "white globe lanterns."

Now, surely, unless the rule means that the light itself is to be so constructed that the light is to be uniform and unbroken over an arc of the horizon of twenty points of the compass, *and no more*, the requirement of the rule as to construction is satisfied by a globe lantern. We submit that the matter of the shutting off of the light from the lantern *so that it shall not shine all around*, but only ten points on either side, is covered by the provision in reference to the "fixing" of the light, which provision is omitted in relation to the towing light.

The reason for this difference is obvious. It is quite important for a vessel coming up astern of a steamer to know whether she has anything in tow. This can be told if the vertical lights are globe lanterns aft, but could not be told if they were to be only lights at the stem which showed only over an arc of twenty degrees. (See The Tillie, 13 Blatch., 514.)

Fifth Point.

If the tug was not in fault, in reference to the lights she carried, and if there was error in the construction of law of the Circuit Court, that she was in fault, it would seem to follow almost inevitably that the Circuit Court erred also in finding that the schooner was free from fault.

On this hypothesis, the tug was approaching the schooner, carrying the lights which the law requires,

and which, if they had been seen, would have told those navigating the schooner that she had a tow astern.

This language the schooner did not heed. It would seem to be the only conclusion, from the fact that those lights which told that story were not seen at all by any one on the schooner during the five to ten minutes that the vessels were approaching each other after the tug had rounded the point, must be that they failed to look for them.

Where lights, which are the statutory language of vessels, are not seen, it would seem to be the only rule to apply, that unless the failure to see them is satisfactorily explained, the conclusion of negligence in the lookout must follow. (The Pennsylvania, 19 Wall., 136.)

This is not a case where the Court has found that there has been a good lookout, although a light which was visible has not been seen. Such a finding would be equivalent to a finding that there was something which prevented the light from being seen by a vigilant lookout, which finding would sustain a conclusion of law that the vessel was free from fault although the lights were not seen.

But in view of the strong language of this Court in reference to the duty of keeping a good lookout, and the burden thrown upon every vessel on which it appears that that duty has not been performed, we submit that the finding that the lights were there on the flag-staff of the tug (Finding 5), and the finding that they were not seen (Finding 8) not only does not sustain the conclusion of law that the schooner was not in fault, but calls for the opposite conclusion of law, that she was in fault. See The Ariadne, 13 Wall., 478. The Adelaide, Taney's Rep., 579-80.

Sixth Point.

Another question of great importance in the case is as to the lights on the barge.

The Court will notice that the answer of the owners of the schooner set up as a defense the absence of lights on the barge. They did not set up that the lights on the tug were such as deceived them into the belief that the tug had nothing in tow; nor did they set up that the lights which the barge had were so dim that they could not be seen till it was too late to avoid a collision. But so far as lights are concerned they averred that there were *no lights* on the barge. As a matter of course if there had been no lights, the schooner would not have been in fault for not having seen lights.

But on this issue of fact, whether the barge had lights or not, the Circuit Court found against the schooner. It found that the barge had two white globe lanterns hanging one above the other from her flag-staff. (Finding 5.)

True, it found that they were "burning dimly."

But it has nowhere defined what is meant by "dimly." It has not found that they could not have been seen all the time after the tug and barge came round the point, if the captain or lookout of the schooner had looked.

There is no finding that a good lookout was kept on the schooner.

But there is a finding that no lights on the barge were seen *at any time* from the schooner.

Does not the fact that the lights were there, and were not seen *at all*, neither those on the barge nor those on the tug, warrant the conclusion that there was negligence in the lookout, which was kept on the schooner? Is not such conclusion inevitable in this case, as it was in the case of the "Ariadne?"

If it is, then surely the conclusion of law, that the schooner was not in fault, was error.

Seventh Point.

The question, What lights ought the barge to have carried under the law? is not brought up for consideration.

No defense was set up involving that question, the only defense being, as we have seen, that she had no lights at all.

The Circuit Court did not consider or pass upon the question. (Opinion—see Rec. p. 64.)

In the absence of any statutory rule covering the point, the carrying of a single light by a barge, not a sail vessel, in tow would, we suppose, be held to be all that was required.

We do not deem it necessary to discuss this part of the IX Rule of the Supervising Inspectors, further than to say, that while there must be great doubt as to the power of the Supervising Inspectors, under the Steamboat Acts, to make rules which shall govern vessels which are not within the purview of those Acts, and great doubt as to their power to require the master of a steamboat to put up a light on any vessel but his own, there can be no doubt we think that this latter part of Rule IX, which the inspectors have adopted, was not intended to apply to this case of a single barge towed on a hawser, but to the practice which prevails on the Hudson river, of towing masses of canal boats and other vessels in a solid body, sometimes nearly a hundred feet in width.

Eighth Point.

As to the navigation of the two vessels, there can, as it seems to us, be but one view to take.

It was the duty of the tug, coming round the point as she did, to keep to her side of the channel, and not to endanger the schooner by attempting to cross her bows.

Such this Court, in the case of the "John L. Hasbrouck" (93 U. S., 406), held to have been the duty of a sailing vessel coming round West Point in the Hudson River, as against a steamboat going up. *A fortiori* must it have been the duty of this tug as against a sailing vessel.

And having rounded the buoy, it is found (Finding 7) that she held a course a point or a point and a half further north than the channel course, thus giving to the sailing vessel all possible room.

As to the schooner, while we concede that, if she was not in fault for not seeing the towing lights, and had the right to act as if the steamtug had nothing in tow, she was not in fault for holding her course, we suppose it must be equally clear that it would have been her duty, if she had seen the towing lights on the tug and the lights on the barge, to have so shaped her course as to go under the stern of the barge because she would have known that the tug could not do any more to avoid her than she had done, and that, if a collision was to be avoided, she must avoid it. She would have known at once that, if she insisted upon holding her course, she would inevitably bring about a collision, which the Rules are made in order to avoid.

If she was in fault therefore in failing to see what she ought to have seen, then she was also in fault for not performing her duty of porting her wheel as soon as she saw that the tug and her tow were going to pass on her port side.

The. A. P. Cranmer, 19 Blatch., 507.

Ninth Point.

A motion was made to dismiss the appeal herein, on the ground that the amount involved is not equal to the statutory requirement; and that motion was ordered by the Court to be heard with the appeal.

In addition to the Brief submitted by us on that motion (to which we refer) the authorities cited in which decide, as we understand it, that the "amount involved," where a libel is dismissed, means the amount of the libellant's claim and not the amount of the security which he has been able to obtain for it, we think that the question has been passed upon by this Court again, since the hearing of the motion, in the case of "The Mamie," 105 U. S., 773.

Tenth Point.

If the above views are correct, it follows that the decree of the Circuit Court dismissing the libel was erroneous and that it should be reversed and a decree directed in favor of the libellant, with a reference in the Circuit Court to ascertain his damages.

BENEDICT, TAFT & BENEDICT,
Procts. for Libellant and Appellant.

R. D. BENEDICT,
Advocate.